

JAN 18 1978

MICHAEL RODAK, JR., CLERK

**APPENDIX**

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IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1977

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**No. 77-444**

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PENN CENTRAL TRANSPORTATION COMPANY, THE NEW YORK  
AND HARLEM RAILROAD COMPANY, THE 51ST STREET REALTY  
CORPORATION, UGP PROPERTIES, INC.,  
*Appellants,*

v.

THE CITY OF NEW YORK, *et al.*,  
*Appellees.*

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On Appeal from the Court of Appeals  
of the State of New York

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Jurisdictional Statement Filed September 20, 1977

Probable Jurisdiction Noted December 5, 1977

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**DOCKET ENTRIES IN THE SUPREME COURT OF NEW YORK  
(TRIAL TERM AND APPELLATE DIVISION)**

**County Clerk, New York County**

**Clerk's Minutes of Supreme Court Actions and Proceedings 1969**

INDEX No. 14763

**PENN CENTRAL TRANSPORTATION Co., Plaintiff**

AGAINST

**CITY OF NEW YORK, Defendant**

**ATTORNEYS: Dewey B., BP&W, 140 Brwy [Penn Central];  
Corporation Counsel, Municipal Bldg. [City of N.Y.]**

Month, Day, Year—Index Number Assigned

Oct. 7, 1969—Summons and Complaint

Oct. 7, 1969—Affidavit of Service

Dec. 24, 1970—Note of Issue

Aug. 18, 1971—Statement of Readiness

Aug. 24, 1971—Order P. I Time to Serve Interrogatories

Mar. 8, 1972—Consent to Withdrawal of Atty.

May 9, 1972—Order spec. File Brief Amicus Curiae  
granted

Sept. 6, 1972—Def'ts Reply Memo, Supp'l Proposed  
Findings, in File Folder

Jan. 21, 1975—Memorandum Decision and Large Envelope  
Exhibits

Jan. 21, 1975—Minutes (6 Volumes)

Feb. 4, 1975—Judgment #3001

Feb. 28, 1975—Notice of Appeal

Mar. 7, 1975—Notice of Appeal

April 18, 1975—Order of Severance  
 June 24, 1975—Exhibits  
 July 28, 1975—[init. SP] 2 Order Exhibits to Defendant  
 Apr. 8, 1976—Remittitur (4)  
 June 7, 1976—Notice  
 June 24, 1977—Remittitur (4)  
 Sept. 8, 1977—Notice of Appeal

PENN CENTRAL ET AL UGI PROPERTIES,  
*Plaintiff-Respondent*  
 against

CITY OF NEW YORK, ET AL,  
*Defendant-Appellant*

Dewey, Attorney for P-R UGI  
 Bernard Richland, Attorney for D-A  
 White & Case, Attorney for P-R Penn Central

N.Y. Co. & Court—Saypol, J.

Index No. 14763/69

Notice of Appeal 3/7/75 & 2/28/75

Date—Aug. 14, 1975

Date—Aug. 15, 1975

Record Filed (22 copies); Printed 4 vols & 2 entered;  
 Judgment Order, 1 entered

Jan. 21, 1975—serving Pltf. cause of action

Feb. 4, 1975—awarding judgment to Pltfs.

Aug. 14, 1975—Note of Issue for Appellant Brief,  
 Oct. 75 Term

Sept. 25, 1975—Respondent Brief

Oct. 14, 1975—Reply Brief

Other—Aug. 28, 1975—Amicus; Sept. 2, 1975—Amicus  
 Sept. 3, 1975—[illegible]

Oct. 21, 1975—Argument (No. 1305, 1306), Stevens  
 Markewich Kufferman Murphy Lupiano

Dec. 16, 1975—Decision—O & J reversed on law. \$60 C & D  
 to App. Opinion by Murphy, J; All concur except  
 Markewich, J, & Lupiano, J, (opinion) who dissent.  
 (SOON)

April 7, 1976—Order of reversal settled and filed.

April 7, 1976—Remitted (No. 628A) to 60 Centre St.



## MOTIONS

| Date  |  | Date          |
|---|--|---------------|
| Aug. 28, 1975—Amicus granted                        |  | Oct. 31, 1975 |
| Sept. 11, 1975—Adj. to Nov. 75 Term                 |  | Nov. 13, 1975 |
| June 23, 1977—C/A. Affd Opinion by<br>Breitel, C.J. |  | Nov. 13, 1975 |

JACOBS, PERSINGER &amp; PARSONS

DOCKET ENTRIES IN THE COURT OF APPEALS OF THE  
STATE OF NEW YORK

[485] PENN CENTRAL TRANSP'N Co. &amp; ORS. (As)

vs.

CITY N.Y. &amp; ANO.

Order Appealed from 5 6 76 (1st)

Order Granting lv

Notice of Appeal 6 7 76 (s)

Statement 500.2 6 17 76 (OK)

Record 8 26 76 (4 Vol's) (24+1)

File

Apptsbrf 8 26 76 (24+1)

Respbrf 1 17 77 (19+1)

AC (Com'e to Save Grand Central Sta) 2 11 77 (19+1)

Replybrf 3 30 77 (19+1)

AC AG 2 25 77 (19+1)

Requests 60 day card 7 6 76

Motions 1 6 77—Mot. withdrawn

92 AC (AG) granted—file in 20 days (Tu 8 Fe 77)

94 AC (Com'e Save Grand Central Sta) granted—file in  
20 days (Tu 8 Fe 77)

Corres'e 2 9 77 Ltr fr A cfmext A to 3 14 77.

[ATTORNEYS]

A Dewey, Ballantine, Bushby, Palmer &amp; Wood

140 Broadway NYC 10005

139 344 8000

for UGP Properties, Inc.

John Friedman Jr. cc City Att's

write confirming letter

White & Case  
 14 Wall Street NYC 10005  
 139 732 1040  
 for Penn Cent, NY & Harlem  
 Rys & 51st St Realty  
 R. W. Bernard Richland  
 Corp. Counsel, NYC  
 Municipal Bldg.  
 NYC 10007

[485a] PENN CENTRAL TRANSP'N Co & ORS (As)

vs.

CITY NY & ANO.

SCHEDULED FOR ARGUMENT: 4 27 77

ARGUED BY: A—John C. F. Wood (Both appellants)  
 R—Leonard Kaerner

DECIDED JUNE 23, 1977

12 21 76 Ltr to Dewey &c. accepting stip'n received  
 inoffice 12 17 76 setting 1 14 77 for R and 2 14 77 for reply.  
 Motion to preclude R is marked withdrawn.

DECISION: Order affirmed, with costs. Opinion by Breitel,  
 Ch.J. All concur. 6/23/77

REM SENT TO: NY Co. Clerk  
 60 Center St.  
 NYC 10007

DATE: 6/23/77

### Complaint.

SUPREME COURT OF THE STATE OF NEW YORK  
 COUNTY OF NEW YORK

[SAME TITLE]

Plaintiffs Penn Central Transportation Company, The  
 New York and Harlem Railroad Company, The 51st Street  
 Realty Corporation and UGP Properties Inc., by their at-  
 torneys, allege as follows:

#### FIRST CAUSE OF ACTION

1. Plaintiff Penn Central Transportation Company is a  
 corporation organized and existing under the laws of the  
 Commonwealth of Pennsylvania and has a general office  
 at 466 Lexington Avenue, Borough of Manhattan, City,  
 County and State of New York. All references to Penn  
 Central Transportation Company hereinafter made and  
 concerning any time prior to February 1, 1968, relate to  
 The New York Central Railroad Company which was  
 merged into the Pennsylvania Railroad Company (the  
 name of which was later changed to Penn Central Trans-  
 portation Company) as of February 1, 1968.

2. Plaintiff The New York and Harlem Railroad Com-  
 pany is, and at all times hereinafter mentioned was, a cor-  
 poration organized and existing under the laws of the State  
 of New York, and has a general office at 230 Park Avenue,  
 Borough of Manhattan, City, County and State of New  
 York. Approximately 95% of the stock of The New York  
 and Harlem Railroad Company is, and at all times herein-  
 after mentioned was, owned by Penn Central Transporta-  
 tion Company.

*Complaint.*

3. Plaintiff The 51st Street Realty Corporation is, and at all times hereinafter mentioned was, a corporation organized and existing under the laws of the State of New York, and has a general office at 466 Lexington Avenue, Borough of Manhattan, City, County and State of New York. The 51st Street Realty Corporation is, and at all times hereinafter mentioned was, a wholly-owned sub-subsidiary of Penn Central Transportation Company.

4. Plaintiff UGP Properties Inc. is, and at all times since its formation on December 5, 1967 was, a corporation organized and existing under the laws of the State of New York, and has a general office at 277 Park Avenue, Borough of Manhattan, City, County and State of New York.

5. Defendant The City of New York (the "City") is a municipal corporation of the State of New York.

6. Defendant The Landmarks Preservation Commission of the City of New York (the "Commission") is a commission of the City of New York, established pursuant to Subsection 25-a of Section 20 of the General City Law, and Local Law 46 of the City of New York for the year 1965, which amended the Charter of the City of New York and the Administrative Code of the City of New York so as to add to each of them a new Chapter 8-A entitled "Preservation of Landmarks and Historic Districts" (the "Landmarks Law").

7. The subject matter of this complaint is Grand Central Terminal (the "Terminal") and the land on which it stands (the "Property").

The ownership and leasehold interests in the Terminal and the Property, held by the respective plaintiffs, are as follows:

(a) The New York and Harlem Railroad Company owns the fee.

*Complaint.*

(b) Penn Central Transportation Company has a lease, expiring in the year 2274 A.D., from The New York and Harlem Railroad Company.

The interests referred to in the foregoing subparagraphs (a) and (b) have been as there described at all times hereinafter mentioned.

(c) The 51st Street Realty Corporation has a grant of term, from Penn Central Transportation Company, coterminous with the lease referred to in the following subparagraph (d).

(d) UGP Properties Inc. has a lease, hereinafter described, from The 51st Street Realty Corporation, under which UGP Properties Inc. is to erect and operate a multi-story office building on the Property.

Penn Central Transportation Company, The New York and Harlem Railroad Company and The 51st Street Realty Corporation are hereinafter collectively called "Penn Central." UGP Properties Inc. is hereinafter called the "Lessee."

8. The Property is located in the heart of Manhattan, in one of the most valuable commercial areas in the world, and in the midst of a host of multi-story office buildings and similar structures.

9. The Property, presently improved with the Terminal, is in fact zoned for other structures as well, including in particular multi-story office buildings. Penn Central's rights in regard to such utilization of the Property, including in particular the space above the street grades, are recognized and defined in the applicable zoning law and regulations with mathematical precision. Application of the prescribed mathematics, including the Floor Area



*Complaint.*

Ratio and the Height and Setback requirements, shows that Penn Central is entitled to construct on the Property an office building at least fifty-six stories high. The Terminal occupies but a small fraction of the space, above the street grades, which Penn Central is thus by law entitled to utilize.

10. The entire mid-Manhattan area in which the Property is located, running from about 40th Street to 57th Street and from Fifth Avenue to Third Avenue, is likewise zoned for multi-story office buildings. Owners and lessees of many of the parcels of land in that area have already utilized their rights in full or substantially so. Others are now in the process of doing so, or are planning to do so.

11. Penn Central has determined to exercise its right to improve the Property with a multi-story office building. To that end The 51st Street Realty Corporation has entered into an Agreement of Lease (the "Lease") with the Lessee, under which the Lessee is to erect and thereafter to operate a multi-story office building on the Property. The Lessee is to pay rent to The 51st Street Realty Corporation at the rate of \$1,000,000 net per year in respect of the period between the commencement date of the Lease and the completion of the building; and thereafter is to pay rent at a rate which will never be less than \$3,000,000 net per year and may be more, depending upon the amount of the Lessee's income from the building. It is estimated that the Lessee's net income from the building, after its completion, will be at least \$5,000,000 per year. The Lease is for a term of 50 years after its commencement date, and the Lessee has an option to renew for another 25 years thereafter. The Lessee has commissioned Marcel Breuer and Associates, one of the world's most renowned architectural firms, to design the building.

*Complaint.*

12. On August 2, 1967 the Commission, acting under the purported authority of the Landmarks Law and having previously held a hearing, and over Penn Central's objection, designated the Terminal a landmark and the Property as its landmark site.

13. Such designation having been made, the Landmarks Law purports to make it unlawful, and subject to criminal penalties, to do anything with either the land or the building which would in any way change the exterior of the building, without the Commission's permission.

14. Further, the Landmarks Law purports to impose upon Penn Central an affirmative and apparently perpetual obligation to keep the exterior of the Terminal in good repair, at Penn Central's own expense and without reimbursement or compensation.

15. Thus continuously since August 2, 1967 the Commission, acting under the purported authority of the Landmarks Law, has imposed prohibitions and restrictions on Penn Central's use of the Property. In particular, the Commission has continuously since January 22, 1968 (the date of the Lease) prevented and prohibited Penn Central and the Lessee from going forward with the building provided for in the Lease.

16. The Landmarks Law makes available to the plaintiffs two procedures for seeking the Commission's permission to construct a multi-story office building on the Property. The plaintiffs have pursued and exhausted both of these procedures. In both cases the Commission has refused to grant the requested permission.

17. The first of such procedures is to request a "certificate of no exterior effect." In order for the plaintiffs

*Complaint.*

to be in a position to make that request, the Lessee commissioned Marcel Breuer and Associates to design a structure which would leave the Terminal, including its exterior as well as the Main Concourse, substantially undisturbed; but which, through an innovative architectural concept, would rise above the Terminal without making any physical change in the exterior thereof.

This design ("Breuer I") was not regarded by the plaintiffs as the most suitable structure from an economic point of view. Rather, it represented a genuine effort by the plaintiffs to afford to the Commission the opportunity to accomplish the substance of the objectives of the Landmarks Law, without attempting to inflict upon a single piece of private property the enormous costs which give rise to this present lawsuit.

On July 18, 1968 the plaintiffs submitted Breuer I to the Commission and applied for a certificate of no exterior effect to enable them to build it. After holding a hearing the Commission on September 20, 1968 denied the application.

18. The other procedure made available to the plaintiffs by the Landmarks Law for seeking the Commission's permission to construct a multi-story office building on the Property is to request a "certificate of appropriateness."

On January 20, 1969 the plaintiffs applied for that certificate, and submitted a design for a building which, externally, would be entirely new.

This design (which with the minor modifications made during the proceedings before the Commission is herein-after called "Breuer II") has been the subject of extensive consideration and comment by the architectural profession and others, and widely acclaimed.

Marcel Breuer and the plaintiffs regard Breuer II as the truly appropriate building, architecturally and commer-

*Complaint.*

cially, for this prime location at the center of the world's greatest city.

The plaintiffs, in their application for a certificate of appropriateness, also resubmitted Breuer I to the Commission, as an alternative. While noting their strong preference for Breuer II, the plaintiffs continued to express their willingness to go forward with Breuer I in order to bring about the accommodations referred to in paragraph 17 above.

After holding hearings the Commission on August 26, 1969 denied in its entirety, and as to both alternatives, the plaintiffs' application for a certificate of appropriateness.

19. The only other procedure provided for in the Landmarks Law, for seeking the Commission's permission to build, is to make an "insufficient return" application—i.e., to request a "certificate of appropriateness authorizing demolition, alterations or reconstruction on ground of insufficient return."

By the terms of the Landmarks Law itself, this procedure is available to others similarly situated but is not available to the plaintiffs.

20. The "landmark" character of the Terminal is highly debatable and at best doubtful. The aesthetic quality of the south facade is obscured by its engulfment among narrow streets and high-rise buildings. It is hardly seen at all except for a short distance to the south on Park Avenue, and even here the view of the facade is intersected by the encircling roadway and by the tall buildings that line Park Avenue. Moreover the Terminal is set against the back drop of the harsh and contrasting lines of the Pan-Am Building which appears to hang over the Terminal and to dwarf it.



*Complaint.*

21. There is a widely held view that what is most notable and worth preserving about the Terminal is not its exterior but its interior—i.e., the Main Concourse. In connection with their application to the Commission for a certificate of appropriateness the plaintiffs specifically offered to commit themselves not merely to preserve but also to restore and maintain the Main Concourse. The Commission rejected the offer.

22. Essentially the only legislative standard contained in the Landmarks Law, for the guidance of the Commission in determining which of the thousands upon thousands of structures in the City shall be designated as landmarks (and thus subjected to the drastic prohibitions and restrictions of the Law) and which ones shall not, is that "any" improvement, thirty years old or older, may be designated by the Commission as a landmark if it "has a special character or special historical or aesthetic interest or value as part of the development, heritage or cultural characteristics of the city, state or nation."

23. The Landmarks Law and the Commission's acts in purported reliance thereon deprive Penn Central of rent at the rate of \$1,000,000 per year in respect of the period commencing on January 22, 1968 and continuing until the date when the building provided for in the Lease would in normal course and in the absence of such prohibitions and restrictions have been completed.

24. The Landmarks Law and the Commission's acts in purported reliance thereon further deprive Penn Central of rent at the rate of at least \$3,000,000 per year, in respect of the period after the building would in normal course have been completed, and continuing until such prohibitions and restrictions are set aside or restrained.

*Complaint.*

25. The Landmarks Law and the Commission's acts in purported reliance thereon deprive the Lessee of income at the rate of at least \$5,000,000 per year commencing as of January 22, 1968 and continuing until such prohibitions and restrictions are set aside or restrained.

26. With respect to other owners of landmarks a point is reached, under the procedures provided for in the Landmarks Law, where just compensation is to be paid by the City for the takings of private property for public use that are involved in the application and enforcement of the Landmarks Law. Unless such compensation is paid, the Commission is required to permit the otherwise lawful use of the property, through issuance of a "notice to proceed."

With respect to the plaintiffs, these procedures are unavailable, and no point ever can be reached under the provisions of the Landmarks Law at which compensation to the plaintiffs is to be provided for and paid; nor has the City or the Commission in any other way provided for or offered to pay compensation to the plaintiffs.

27. The deprivations of property described in paragraphs 23, 24 and 25 above constitute the real economic cost of preserving the exterior of the Terminal as a landmark and thus of forwarding the objectives which the Commission deems to be embodied in the Landmarks Law.

Such benefits, if any, as may derive from such preservation are for the public as a whole; but the Landmarks Law and the actions of the Commission thereunder extract the entire cost from the plaintiffs alone.

28. On September 2, 1969 the demands and claims upon which this action is founded were presented by the plaintiffs to the Comptroller of the City of New York for adjustment; and for more than 30 days after such present-

*Complaint.*

ment the Comptroller has neglected and refused to make an adjustment or payment thereof.

29. As applied to the plaintiffs, the Landmarks Law and the actions of the Commission thereunder go beyond the scope of any permissible regulation and constitute a taking of the plaintiffs' private property for public use without just compensation, in violation of the Constitution of the United States, most particularly Amendments 5 and 14, and the Constitution of the State of New York, most particularly Article I, Section 7.

30. The plaintiffs have no adequate remedy at law for the irreparable harm inflicted upon them.

## SECOND CAUSE OF ACTION

31. The plaintiffs repeat and reallege each of the allegations contained in paragraphs 1 through 28 and 30 of this complaint.

32. The Landmarks Law and the actions of the Commission thereunder have heretofore deprived, are now depriving and until set aside or restrained will continue to deprive the plaintiffs of their property without due process of law, in violation of the Constitution of the United States, most particularly Amendment 14, and the Constitution of the State of New York, most particularly Article I, Section 6.

## THIRD CAUSE OF ACTION

33. The plaintiffs repeat and reallege each of the allegations contained in paragraphs 1 through 7, 12, 13, 28 and 30 of this complaint.

*Complaint.*

34. The designation of the Terminal as a landmark and of the Property as its site, and resulting subjection thereof to the prohibitions and restrictions contained in the Landmarks Law, constitutes a taking of the plaintiffs' private property for public use without just compensation, in violation of the Constitution of the United States, most particularly Amendments 5 and 14, and the Constitution of the State of New York, most particularly Article I, Section 7.

## FOURTH CAUSE OF ACTION

35. The plaintiffs repeat and reallege each of the allegations contained in paragraphs 1 through 28 and 30 of this complaint.

36. The Landmarks Law denies to the plaintiffs the equal protection of the laws in violation of the Constitution of the United States, most particularly Amendment 14, and the Constitution of the State of New York, most particularly Article I, Section 11.

## FIFTH CAUSE OF ACTION

37. The plaintiffs repeat and reallege each of the allegations contained in paragraphs 1 through 28 and 30 of this complaint.

38. The Landmarks Law attempts to provide for an administrative prescription of the aesthetically good, and is unconstitutional because it fails to provide adequate legislative standards by which the Commission is to make such decisions or by which the action of the Commission can be judged, and is an unlawful delegation of legislative authority, in violation of the Constitution of the United States,



*Complaint.*

most particularly Amendment 14, and the Constitution of the State of New York, most particularly Article I, Section 6 and Article III, Section 1.

## SIXTH CAUSE OF ACTION

39. The plaintiffs repeat and reallege each of the allegations contained in paragraphs 1 through 7, 12, 13, 14, 28 and 30 of this complaint.

40. Within the Terminal there are various railroad facilities, including passenger terminals, passenger ticket offices, switch yards, and other transportation equipment and facilities, which Penn Central uses in intrastate and interstate carriage of passengers.

41. The railroad facilities located within the Terminal and used in both intrastate and interstate commerce are subject to the regulatory jurisdiction of the New York Public Service Commission pursuant to the provisions of the Public Service Law of the State of New York and of the Railroad Law of the State of New York, and the regulatory jurisdiction of the Interstate Commerce Commission pursuant to the provisions of the Interstate Commerce Act, U.S.C.A., Title 49.

42. Under Section 50 of the Public Service Law of the State of New York, the Public Service Commission is given the power to order repairs or changes in terminals or terminal facilities. The legislative body of the City of New York is expressly forbidden, under Section 11 of the Municipal Home Rule Law, to adopt any law which applies to or affects any provision of state law providing for regulation or elimination of terminal facilities within the City of New York.

*Complaint.*

43. The Landmarks Law has no application in respect of the Terminal or the Property, and the Commission's actions are null and void.

## SEVENTH CAUSE OF ACTION

44. The plaintiffs repeat and reallege each of the allegations contained in paragraphs 1 through 28, 30, 40, 41 and 42 of this complaint.

45. The Landmarks Law, as applied in respect of the Terminal and the Property, has a substantial adverse effect upon Penn Central's operations and charges as an interstate carrier, and constitutes an unreasonable burden upon interstate commerce, in violation of the Constitution of the United States, most particularly Article I, Section 8.

WHEREFORE, the plaintiffs pray that this Court enter its judgment:

1. Declaring that the Landmarks Law, as applied to the plaintiffs, violates the Constitution of the United States and the Constitution of the State of New York; that neither the City nor the Commission had or has any power or jurisdiction to enact or enforce such Law, through designation of the Terminal as a landmark or otherwise; and that such Law is null and void and of no force or effect in regard to the plaintiffs or the Terminal or the Property.

2. Permanently enjoining the defendants from using or threatening to use the Landmarks Law or any provision thereof or any action or regulation thereunder to prevent, impede, obstruct or in any way have any bearing with respect to the construction, use and occupancy, on the Property, of Breuer I or Breuer II or any other structure which

*Complaint.*

may otherwise lawfully be erected on the Property or any other use which may otherwise lawfully be made of the Property.

3. Declaring that the prohibitions and restrictions imposed by the defendants, during the period between the designation date (August 2, 1967) and the date when all such prohibitions and restrictions shall have been finally set aside pursuant to this Court's order, constitute a temporary taking of the Property for which just compensation must be paid by the City; and ordering the City to pay such compensation, computed at the rates set forth in paragraphs 23, 24 and 25 of this complaint.

4. Granting to the plaintiffs such other and further relief as to this Court may seem just and reasonable.

Dated: New York, New York  
October 7, 1969

DEWEY, BALLANTINE, BUSHBY, PALMER & WOOD

MURRAY DRABKIN

WHITE & CASE

Attorneys for Plaintiffs

**Verified Answer.**

**SUPREME COURT OF THE STATE OF NEW YORK**  
**COUNTY OF NEW YORK**

[SAME TITLE]

Defendants, answering by their attorney J. Lee Rankin, Corporation Counsel, respectfully allege:

FIRST: Deny that they have any knowledge or information sufficient to form a belief as to each and every allegation set forth in paragraphs "1", "2", "3", "4", "7", "9", "10", "11", "23", "24" and "25" of the complaint.

SECOND: Deny each and every allegation contained in paragraphs "13", "14", and "15" of the complaint, and respectfully refer the court to § 207-4.0, § 207-9.0, § 207-10.0 and § 207-16 of the Administrative Code of the City of New York for the full text and meaning thereof.

THIRD: Deny that they have any knowledge or information sufficient to form a belief as to each and every allegation set forth in paragraph "17" of the complaint, except admit that on July 18, 1968 plaintiffs submitted "Breuer I" to the Commission and applied for a certificate of no exterior effect to enable them to build it, and that after holding a hearing the Commission on September 20, 1968 denied the application.

FOURTH: Deny that they have any knowledge or information sufficient to form a belief as to each and every allegation set forth in paragraph "18" of the complaint, except admit that on January 20, 1969 plaintiffs applied to the Commission for a certificate of appropriateness and submitted "Breuer II" and resubmitted "Breuer I", and that



*Verified Answer.*

after holding hearings the Commission on August 26, 1969 denied in its entirety, and as to both alternatives, the plaintiffs' application for a certificate of appropriateness.

FIFTH: Deny each and every allegation contained in paragraph "19" of the complaint, and respectfully refer the Court to § 207-8.0 of the Administrative Code of the City of New York for the full text and meaning thereof.

SIXTH: Deny each and every allegation set forth in paragraphs "20", "22", "27", "29", "32", "34", "36", "38", "43", and "45" of the complaint.

SEVENTH: Deny each and every allegation set forth in paragraph "21" of the complaint except admit that the Commission rejected plaintiffs' application for a certificate of appropriateness.

EIGHTH: Deny each and every allegation contained in paragraph "26" of the complaint, and respectfully refer the Court to § 207-8.0 of the Administrative Code of the City of New York for the full text and meaning thereof, except admit that neither the City nor the Commission has in any way provided for or offered to pay compensation to the plaintiffs.

NINTH: Except as hereinbefore admitted or otherwise pleaded, deny each and every allegation repeated and alleged in paragraphs "31", "33", "35", "37", "39", and "44" of the complaint.

AS AND FOR A FIRST FULL, COMPLETE AND SEPARATE DEFENSE,  
THE DEFENDANTS ALLEGE:

TENTH: The membership of the Landmark Preservation Commission includes among others architects, realtors, an historian, a city planner, and an attorney.

*Verified Answer.*

ELEVENTH: The Landmark Preservation Commission has conducted extensive studies of places and buildings in the City of New York for the purpose of designating such places and buildings as landmarks and historic districts.

TWELFTH: An exhaustive study of Grand Central Station was conducted by the Landmarks Preservation Commission for the purpose of determining if Grand Central merited designation as a landmark.

THIRTEENTH: A public hearing on the proposed designation of Grand Central was held on May 10, 1966, and was continued to subsequent meetings of the Commission and closed January 31, 1967.

FOURTEENTH: The plaintiff New York and Harlem Railroad Company, and New York Central Railroad Company, appeared by its attorney, at the public hearing and fully presented its views to the Landmarks Preservation Commission regarding the proposed designation of Grand Central as a landmark.

FIFTEENTH: A memorandum to the Commission wherein the plaintiff's position regarding the proposed designation was extensively set forth was submitted.

SIXTEENTH: The Landmarks Preservation Commission after considering all of the evidence found that among all its important qualities, Grand Central is a magnificent example of French Beaux Arts architecture, that it is one of the great buildings of America, that it represents a creative engineering solution of a very difficult problem, combined with artistic splendor, that as an American Railroad Station it is unique in quality, distinction and character, and that this building plays a significant role in the life and development of New York City.



*Verified Answer.*

SEVENTEENTH: On August 2, 1967 the Landmarks Preservation Commission designated Grand Central a landmark.

EIGHTEENTH: On October 7, 1969, the Landmarks Preservation Commission and the City of New York were served with a copy of the complaint.

NINETEENTH: The right to review the factual determination made by the Commission in designating Grand Central a landmark, in that it found that Grand Central has a special character, special historical and aesthetic interest and value as part of the development, heritage, and cultural characteristics of New York City, did not accrue within four months before the commencement of this action, and is, therefore, barred by the limitation of time contained in Section 217 of the Civil Practice Law and Rules which provides that a proceeding against a body or officer must be commenced within four months after the determination to be reviewed becomes final and binding upon the interested party.

AS AND FOR A SECOND, FULL, COMPLETE AND SEPARATE DEFENSE,  
THE DEFENDANTS ALLEGE:

TWENTIETH: The defendants repeat and reallege each of the allegations contained in paragraphs "10" through "17" of this complaint.

TWENTY-FIRST: On July 18, 1968 application was made to the Landmarks Preservation Commission by plaintiffs for a Certificate of No Exterior Effect for work to be done at Grand Central Terminal (hereinafter referred to as "Breuer I").

TWENTY-SECOND: After holding a hearing, the request was denied by the Commission on September 20, 1968.

*Verified Answer.*

TWENTY-THIRD: On January 20, 1969 the Landmarks Preservation Commission received the application of plaintiffs for a Certificate of Appropriateness for the work that had been proposed under the application of July 18, 1968 ("Breuer I"), as well as for an alternative proposal (hereinafter referred to as "Breuer II").

TWENTY-FOURTH: On April 10, 11 and 14, 1969 a hearing was held as advertised and testimony was presented as to "Breuer I" and "Breuer II".

TWENTY-FIFTH: Plaintiffs submitted further revised proposals to the Commission on June 23, 1969, and a final and complete set of drawings was received on August 1, 1969 (hereinafter referred to as "Breuer II" Revised).

TWENTY-SIXTH: A hearing was held on August 5, 1969.

TWENTY-SEVENTH: It was agreed that, except insofar as testimony was directed towards an element in which "Breuer II" specifically differed from "Breuer II" Revised, all oral and written arguments received at or subsequent to the April 1969 hearing might be considered by the Commission in reaching its determination.

TWENTY-EIGHTH: The Commission, after careful consideration, on August 26, 1969 denied plaintiffs' application for a Certificate of Appropriateness as to both "Breuer I" and "Breuer II" Revised.

TWENTY-NINTH: The proceedings of the Landmarks Preservation Commission in designating Grand Central as a landmark, and in denying plaintiffs' applications for a Certificate of No Exterior Effect and a Certificate of Appropriateness were in all respects in accord with the law.

*Verified Answer.*

WHEREFORE, defendants ask for a judgment of this Court declaring:

1. The designation of Grand Central a landmark is valid and constitutional.
2. The Landmark Law as applied to plaintiffs is valid and constitutional.
3. That the Landmark Law is valid and constitutional.
4. That the defendants have the costs and disbursements of this action and such other relief as this Court deems just and proper.

J. LEE RANKIN  
Corporation Counsel  
Attorney for Defendants

Dated: New York, N.Y.  
November 5, 1970

(Verified by Harmon Goldstone on November 5, 1970.)

**TESTIMONY**

[20] FREDERICK ROVET, residing at 2 Gramatan Drive, Yonkers, New York, called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows.

**DIRECT EXAMINATION**

BY MR. STEWART:

Q. Mr. Rovet, what is your present occupation? A. I am Assistant Vice President real estate of Penn Central Transportation Company.

Q. Do you hold any other positions with the Penn Central? A. I'm an officer and director of the 51st Street Realty Corporation. I am also president of the Realty Hotels, Inc., the company which operates Penn Central's four hotels, the Biltmore, Barclay, Roosevelt and Commodore Hotel.

Q. Do you hold a position with the New York & Harlem Railroad Company? A. No, I do not.

THE COURT: I don't think he was around then.

THE WITNESS: I was an officer and director in April of this year and I resigned.

[21] THE COURT: But you weren't around when it was New York & Harlem Railroad?

THE WITNESS: It still is.

Q. Are you a lawyer? A. Yes, sir.

Q. When were you admitted to practice? A. In December of 1956.

Q. And was that in New York? A. Yes, sir.

Q. When did you join the Penn Central? A. August 6 of 1956 I joined the General Counsel's office of the New York Central Railroad Company.

Q. And what jobs have you had since then down to date? A. I was an attorney from December of 1956. Two years



after that I received different titles, but remained an attorney until October 31st of 1968 in the General Counsel's office of the New York Central Railroad Company and then subsequent to merger, the Penn Central Transportation Company.

. . .

[24] BY MR. STEWART:

Q. And what building did these plans provide for? A. Provided for an office building over the existing Grand Central Terminal.

Q. How many stories? A. I believe it was 20 stories.

Q. Was any provision made in the terminal [25] building itself for supports for this building? A. Yes. The present terminal building has foundations which were designed to accommodate the 20-story office building over the terminal. They are still located in the Grand Central Terminal today.

. . .

[64] THE WITNESS: If I may try to describe it more accurately, your Honor, you're concerned with the place where OTB now occupies the former ticket windows, you're concerned with the westerly side of the ticket windows that you referred to before, you're concerned with the interior of that ticket office, until you reach the waiting room on the southerly side. The tower would proceed, under the terms of the lease—

THE COURT: All right, those rented facilities are subject to termination in the event of the consummation of this lease.

THE WITNESS: Yes.

THE COURT: That's your testimony.

THE WITNESS: Yes.

. . .

[66] Q. Does the Railroad pay any real estate taxes on the land on which Grand Central Terminal is located? A.

The Railroad presently is not paying real estate taxes pursuant to an order of the Federal Court in Philadelphia, pursuant to which the Penn Central is in reorganization.

. . .

[70] Q. Under the lease, Exhibit 2, who is responsible for paying real estate taxes? A. UGP Properties, Inc. would be obligated to pay as additional rental 100 per cent of the tax on the new building, 100 per cent of the tax on that portion of the old building which is within an area defined under the lease as the enclave, and 100 per cent of the tax rate applied to the total assessment on the land of Parcel A.

. . .

[84] THE COURT: And so between the two million [85] four total available here, total usable area, legal usable area, and the actual area used, you're got about two million plus square feet to give away?

THE WITNESS: Yes, your Honor.

THE COURT: All right.

Now, I understand it.'

MR. STEWART: This chart, your Honor, just to make it probably unnecessarily clear was prepared not primarily to indicate what size building could be put on the Grand Central site, but, rather, to indicate what portion of the air rights could be transferred to another location.

. . .

[96] Q. I hand you Plaintiffs' Exhibit 11 for identification and ask you, Mr. Rovet, who prepared that? A. This exhibit was prepared under my jurisdiction and supervision.

Q. And is the information contained therein true and correct? A. The information is correct.

Q. And taking the first page or the heading on the left as "property subject to long-term ground leases," which properties are those on the plaintiffs' exhibit?

THE COURT: I can see at once, Mr. Stewart.

If I may interrupt you, the details of the occupancy shown on Plaintiffs' Exhibit 10 are detailed, as I say, on Plaintiffs' 11 for identification; is that the short of it?

MR. STEWART: That is correct, sir.

. . .

[99] THE COURT: That is shown on the legend. I take it the only available properties for transfer of their air rights are in red. They are not subject to ground leases or contracts of sale?

THE WITNESS: That's correct, your Honor.

THE COURT: You have complete control there. All right.

The only ones available for transfer are the red buildings. The Biltmore is one of them. That is No. 2 in Plaintiffs' Exhibit 10?

THE WITNESS: Yes, your Honor.

. . .

[101] THE COURT: Just clear me on this.

In what circumstances is the transfer, air rights transfer, available, adjacent properties?

These rights cannot be sold, is that right? They cannot be conveyed, as a matter of bargain and sale?

THE WITNESS: I think they can be conveyed, your Honor, provided the owner, as defined in the zoning law, which includes not only a fee owner but an owner of a term of 50 years with one renewal of 25 years, provided that owner and the owner [sic] of the candidate for transfer are the same.

THE COURT: In other words, the idea is to obviate hardship.

THE WITNESS: Yes.

THE COURT: Is that singular to the Landmark Law or is it applicable in other circumstances?

THE WITNESS: It may be applicable in other circumstances.

[102] THE COURT: In other words, forget for a moment that we're involved with the landmark problem.

As the owner of Grand Central Station, as a matter of hardship, could you conceivably or legally avail yourself of that unused area?

THE WITNESS: We could.

THE COURT: —With some other adjacent site?

THE WITNESS: We could do that without using the Landmark Law.

THE COURT: Assume Grand Central Station was not designated as a landmark area—

THE WITNESS: Yes, sir.

THE COURT: —could you utilize the unused air rights on some other property that you own, on some other adjacent property that you own, increasing the otherwise available area?

THE WITNESS: Yes, your Honor, only in one case, and that would be the Commodore Hotel, which is marked as No. 7 on this exhibit.

THE COURT: As an adjacent site.

THE WITNESS: Yes.

. . .

[140] THE COURT: Let's take the Biltmore.

. . .

[141] THE COURT: Now, if you took the Grand Central rights and transferred them, what did you do?

THE WITNESS: You could add the two million one over Grand Central to that seven seventy-nine, assuming that



you could get bonuses, and you'd have a monumental figure of two million eight.

THE COURT: That's a pretty big building.

THE WITNESS: Yes.

THE COURT: A lot of space.

THE WITNESS: It would be like an obelisk.

[142] THE COURT: What's wrong with that?

THE WITNESS: It would be infeasible to go beyond a certain number of floors because you'd have to have one elevator bank going all the way up to the top and you'd find that the lower floors were almost fully covered by elevators, so there comes a point of no return in building a structure like that.

It seems to me that you have to stop at 59 stories or 60, and beyond that it's economically infeasible to go.

. . .

[148] Q. With respect to the Roosevelt Hotel, Plaintiffs' Exhibit 14 indicates that the lot area is the same as that for the Biltmore.

Do the same considerations apply with respect to the transfer of the air rights to the Hotel Roosevelt site as you have testified applied in the case of the Hotel Biltmore except for this series point? A. Yes, sir.

. . .

[151] THE COURT: You said that would be with a 52-story building?

THE WITNESS: More than 70, your Honor.

THE COURT: What about the Roosevelt in 1968?

THE WITNESS: The considerations are almost exact, your Honor, as the Biltmore.

. . .

[169] Q. In your direct testimony, Mr. Rovet, you testified that in 1962 the Railroad considered the use of the waiting room for a bowling alley, is that correct? A. That's what I testified to, yes.

Q. Now, since that time, has the Railroad ever considered the use of the waiting room for [170] any other commercial purpose? A. No, we regarded ourselves as being frustrated.

Q. You regarded yourself as being frustrated since 1962, is that it? A. Yes.

. . .

[183] Q. Isn't it a fact that the decision to [184] build on the Biltmore site was not made public because of the feared effect upon the labor force in the Biltmore Hotel? Is that a fact or not?

. . .

A. There was no decision ever to build on the Biltmore site.

Q. Has there been any attempt, since 1970, to discuss building on the Biltmore site with any of the defendants? A. Yes.

Q. When were those discussions had, if you know? A. In the latter part of 1970 and the early part of 1971, UGP Properties, Inc., and the Railroad attempted to negotiate a lease of the Biltmore site, but the lease never came to fruition, we never came to terms.

THE COURT: You mean a lease with a prospective builder. [185] THE WITNESS: With UGP Properties, Inc., your Honor.

Q. Are those the only discussions had with respect to building on the Biltmore site other than what you just told us? A. Yes, absolutely.

THE COURT: Who are the principals in UGP?

THE WITNESS: Morris Saady is the President of the UGP Properties, Inc.



THE COURT: He has no connection with the plaintiffs as such.

THE WITNESS: Other than being the President of one of the plaintiff companies.

THE COURT: Not part of the New York Central complex.

THE WITNESS: No, sir.

THE COURT: When these discussions went on with Saady of UGP about building on the Biltmore site, did that include a consideration of the transfer of the Grand Central air rights?

THE WITNESS: Oh, yes, sir.

[186] THE COURT: Go ahead.

How far did those discussions get, can you tell me that?

THE WITNESS: They were bogged down in considerations of the rent. Saady would not pay the \$5,000,000 rent that I referred to previously in my testimony, your Honor, because he felt it was too high to make the project feasible.

THE COURT: What were the details of the project, do you know? What did he propose to do? What did he have in mind? Did he say?

THE WITNESS: He had in mind making the transfer, knocking down the Biltmore and putting up a large office building on the Biltmore site.

THE COURT: How large? How high?

THE WITNESS: I've forgotten, your Honor. I believe it's something like 59 to 61 stories.

THE COURT: Office building?

THE WITNESS: Yes, your Honor.

[187] THE COURT: You wanted \$5,000,000.

THE WITNESS: We wanted \$5,000,000 for the combination.

We also wanted certain indemnities in the event that the project would not go through, in order to make us whole on the Biltmore Hotel.

THE COURT: You mean five million a year.

THE WITNESS: Yes.

THE COURT: How many years?

THE WITNESS: We would want that \$5,000,000 for an initial term of at least 50 years with a renewal of 25 years subject to increasing for hedges against inflation over the term.

THE COURT: The other parties make a counter-offer?

THE WITNESS: They made counter-offers from time to time but we regarded them as—

THE COURT: How near five million a year did they come?

THE WITNESS: Not close at all.

THE COURT: Do you know how much [187A] was offered?

THE WITNESS: Three million seven, three million eight.

. . .

[200] HERBERT BECKHARD, residing at Red Spring Lane, Glen Cove, Long Island, New York, called as a witness on behalf of the plaintiffs, having been duly sworn, was examined and testified as follows:

#### DIRECT EXAMINATION

BY MR. STEWART:

Q. Mr. Beckhard, what is your occupation? A. I'm an architect.

Q. Where do you work? A. I work in the firm of Marcel Breuer & Associates, located at 635 Madison Avenue, New York.

Q. Is that a partnership? A. It is.

Q. Are you a partner? A. I'm a partner.

Q. When did you become a partner? A. In 1964.

Q. When you join the organization? A. In 1951.

Q. Would you tell us your professional training? A. I went to the Pennsylvania State University, studied architectural engineering there and did graduate [201] work at Princeton University in 1949 and '50.

. . .

[382] Q. Did you prepare any plans for any construction on any alternate site in the Grand Central area for UGP other than the site on Grand Central Terminal? A. Yes.

Q. Where was that site? A. We investigated several sites, starting with the Commodore, then the Roosevelt Hotel site, 466 Lexington Avenue site, and lastly, the site of the Biltmore Hotel.

Q. Did you prepare plans for all these sites? A. To varying degrees of thoroughness.

Q. Was the Biltmore site the most advanced set of plans you had? A. Yes.

Q. What degree of planning did you reach with [383] the Biltmore plans? A. A state comparable to these three projects.

Q. And what date did you prepare those plans? A. I don't recall the exact date.

Excuse me, you have the drawings in evidence. If you would let me look at the drawings, I could give you the date.

These drawings bear the date 15 December 1969.

Q. Are those the only drawings you prepared for construction on the Biltmore site? A. These were not drawings for construction.

MR. NESPOLE: Question withdrawn.

Q. Are those the only plans you prepared for building on the Biltmore site? A. Well, we prepared quite a few sketches and we discussed with the Planning Commission whether or not we would have a park on Madison Avenue or one of the side streets. We went through quite a few sessions with them in deciding things of that nature.

We discussed a bridge with them, and so on, and this represents the final product, I guess.

Q. Do those plans reflect the total number [384] of floors? A. Yes.

Q. Do they reflect the distribution of arcades, plazas, and so forth? A. Yes.

Q. Were these part of the conversations had with the representatives of the City Planning Commission? A. Yes.

Q. According to plans, what was the gross building size for the building on the Biltmore site? A. Again it was approximately two million.

. . .

[385] Q. Did these plans assume the transfer of the development rights over Grand Central Terminal to the Biltmore site? A. Yes.

. . .

[434] MURRAY DRABKIN, residing at 1814 24th Street, N.W., Washington, D.C., called as a witness on behalf of the Plaintiffs, having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. STEWART:

Q. What is your occupation? A. I'm a lawyer.

Q. When were you admitted to the Bar? A. I was admitted to the Bar of the District of Columbia in 1953 and to the Bar of the State of New York, I believe it was in 1966.

Q. Are you an officer of UGP Properties, one [435] of the plaintiffs in this case? A. Yes, I am.

Q. What is your position? A. I'm vice president and secretary to the corporation, and general counsel.

. . .

[444] Q. Taking that procedure in account, was UGP in a position to use that procedure to attempt to obtain permission to transfer? A. Not at any point. It is necessary to have not only an originating site—and by that I mean the [445] landmark site which generates the air rights—which, of course, UGP had under its lease with the Railroad, but it also must have what I would call a transferee site.

UGP's only property interest in Manhattan throughout this entire matter has been its leasehold interest on Grand Central Terminal. It did not have at any point, and does not have now, a possible transferee site.

. . .

[463] THE WITNESS: Yes, we are co-plaintiffs in this, and the discussions were with myself and UGP.

THE COURT: Whatever you say, using the word "amenable," applies to Penn Central.

THE WITNESS: We work as a team, the Penn Central people and ourselves.

THE COURT: All right, that would not have been an obstacle, if something agreeable had been arrived at.

THE WITNESS: Correct.

THE COURT: What happened after that?

You now have this zoning resolution, is that right, and does it contain the provisions that were directed toward this problem?

THE WITNESS: The Planning Commission staff then went about getting the resolution adopted, and our position was, that is, we made no commitment that we would, in fact, build this building or that building.

[464] We investigated various buildings with them and we said, if it was feasible, we would do so, and so in December of '69, the change in the law was, in fact, enacted, and after it was enacted we continued to investigate in considerable depth and considerable expense the possibility of transferring the air rights to any number of alternative sites.

THE COURT: It never worked out.

THE WITNESS: Every site we investigated turned out to have obstacles which resulted in it not being an acceptable substitute, even a reasonable substitute for what we have. Indeed, it turned out that none of them were really feasible.

THE COURT: The transfer of air rights is available if you picked a suitable site.

THE WITNESS: Well, they're available, I think, in a highly risky and speculative way.

Could I take a moment and go through some of the problems that confronted us in this regard?

To say that the transfer is available is [465] easy, but when you start trying to work it out, you really run into some very serious problems.

. . .

[467] Now, we, as a developer, have to make a choice about whether we're going to try to transfer air rights.

We have 2,000,000 square feet of air rights on Grand Central Terminal, and we start thinking about where we could possibly transfer and how long and what are the problems.



First of all, it requires a special permit from the Landmarks Preservation Commission, from the City Planning Commission.

In order to get that special permit, we first have to satisfy the Landmarks Commission that this is a program for continuing maintenance of the landmark, which is satisfactory to them, and what that constitutes and what the cost of it will be is entirely up in the air and conjectural.

Secondly, we have to satisfy the City Planning Commission that the transfer will not result in undue density or not result in an increase in bulk or any of these other things [468] that are stated in the statute; and then, if we've satisfied the staff as to that, the matter then goes to the City Planning Commission, which by majority vote can decide either way on the thing.

If it survives the City Planning Commission, it then is subject to hearings before the Board of Estimate, and the decision by the Board of Estimate as to whether it will authorize the transfer.

Now, in that kind of proceeding, there is often many a slip between the cup and the lip, and for the developer such a procedure is fraught with peril and risk.

When you add to that the fact that the transfer, once made, is irrevocable, you have some real problems which are far less than a full right to develop.

• • •

[469] THE COURT: Who made the suggestion?

THE WITNESS: Mr. Robertson of the Planning Commission that we transfer F.A.R. to the Biltmore or Roosevelt Hotel or 466 Lexington Avenue or the Commodore Hotel. We systematically [sic] examined every one of these proposals. Let's look at the Biltmore and Roosevelt and these present very similar problems.

Suppose, in fact, we had managed to get all of the approvals required by this statute, we would have then proceeded to build a building of some 2,000,000 square feet or attempted to build a building of some 2,000,000 square feet on a site which was 43,000 square feet. That means that that building would have had to have gone out to the building line on at least three sides, and it would have had to go up about 60 stories.

I think the number was, in fact, 63, if my recollection serves me correctly. The streets around the Biltmore and the streets around the Roosevelt are narrow streets, if you will recall 45th, 46th, Vanderbilt and Madison, and it seemed [470] to us that there was a tremendous risk that an owner of a neighboring building would take a look at this statute, and so, well, how could we say that this building does not unduly increase the bulk of a new development with regard to air rights? How can we not say that the transfer of air rights to this new site does not result in density of population or undue density in the use of the block, with the result, your Honor, that we would have been confronted with taxpayers' suits by neighboring property owners, which would either have prevented or totally impeded or totally prevented this development.

Now, I mentioned earlier irrevocability. We would then find ourselves in the net position of having transferred the air rights from Grand Central, and if the taxpayer—a taxpayer's suit, with air rights irrevocably transferred to that site, and never be able to develop these, with risks which seemed to us that a developer ought not to take. They were certainly not a substitute for what we had at Grand Central.

THE COURT: Continue.

[471] Q. I take it from your testimony that during 1969 and 1970 you were actively considering the possibility of transferring air rights.

You indicated two reasons which suggest how UGP felt about this, that is, the delays and uncertainty in the administrative process and also the risk, serious risk of taxpayers' suits.

Are there any other general considerations that went into your planning? A. Yes. Another important consideration, of course, was that of obtaining vacant possession. At Grand Central we had a site in which we could obtain vacant possession in which we could proceed with development within 90 days.

Each of the concessionaire leases at Grand Central have a clause which allows the railroad to terminate on 90 days' notice. So, once we had the go ahead we could begin construction no later than 90 days thereafter.

On the other hand, if you look at the alternative site, you don't have that kind of thing. At the Roosevelt Hotel, if my recollection serves me correctly, I believe there were then leases outstanding until—

[472] THE COURT: We have that in the record. We already have that.

THE WITNESS: There were also problems of vacant possession in the Biltmore and at the Commodore. So that—and at 466, where I believe there were also space leases outstanding.

. . .

Q. With respect to the Hotel Commodore, did you encounter any problems with respect to the possible transfer of air rights to that site?

. . .

[473] THE WITNESS: There were, of course, the general problems to which I have already alluded, the problems of getting vacant possession, the administrative obstacles, the possible taxpayers' suits and the Commodore presented a special problem in its sub-surface conditions.

As was mentioned earlier, the Commodore sits astride the loop track of the Penn Central system. It also sits astride two levels of the subway system, the Flushing line and the Lexington Avenue, and these presented enormous problems in construction and in time and course, which seemed to us to be insurmountable.

BY MR. STEWART:

Q. Were there any other considerations with respect to the Biltmore site other than those you just mentioned?

Were there any financial considerations? [474] A. Yes. There were certainly very serious financial considerations at the Biltmore site. The Biltmore is a going hotel. It is, in fact, one of the most profitable of hotels which is owned by the railroad. Its earnings over the past few years range anywhere from about—I think the low is probably around a million two up to perhaps a million eight; in that range; and if we were to build an office building on that site it would have been necessary for us to, in fact, acquire a going business; it would have been necessary for the railroad to give up a going business.

Now, people are willing to give up going businesses if they get a good enough price for them, and this was, in fact, reflected in the railroad. It's a position on the Biltmore.

We conducted extensive and serious negotiations with the railroad in the hope that we could acquire a site and make this thing work. Our attitude was not negative about it. Our attitude was constructive and positive. We wanted to make it work, we wanted to go ahead with the building if we could [475] possibly do it. So we spent an awfully long time dickering back and forth with the railroad to try to work out a lease that we could live with, and when the whole thing broke down finally, the last figure that we had was \$5,000,000 a year rental for the Biltmore Hotel. That, plus the other obstacles, just made it a completely unacceptable risk.



Q. Did the— A. Excuse me. My I just add one thing which might give us some perspective?

At Grand Central we were talking about a rental which was around three million as opposed to a rental of around five million for a site which we could not consider to be nearly as attractive.

The economics of it are more important not only in terms of what it cost us but also in terms of what we could hope to get out of it. We start out with a big minus on the Biltmore site and we start out paying perhaps \$2,000,000 a year more in rental.

On the other side of the ledger it was our view that we could get anywhere from 50 cents to a dollar a square foot more rent on the Grand Central Terminal site. Well, let's say it isn't 50 cents or [476] a dollar. All right, take the difference of perhaps 75 cents a square foot. So, two million square feet times 75 cents a square foot is a million and a half dollars a year.

It was our view that the Grand Central Terminal site would produce perhaps a million and a half dollars a square foot more than the Biltmore, in addition to which the Biltmore would cost us \$2,000,000 more in rental. So there was a three and a half million dollar disadvantage that you start out with on the Biltmore site compared to Grand Central.

I would add a couple of more considerations. We were prepared to go ahead with Grand Central in 1968. The zoning transfer which would have allowed us to move ahead on the Biltmore, if it were feasible, did not pass until the end of 1969. If everything had gone perfectly and if we had been able to go ahead with the Biltmore, it would not have been until well into 1970 because of the administrative procedures that we had to go through.

By that time real estate ratings had gone up, operating costs had gone up; none of these things [477] could have

been reflected in escalation clauses as they would have been at Grand Central, with the result that there would have been a substantial additional difference in the cost of doing the Biltmore, in the course of operating the Biltmore, all of which would have inured to the detriment of the landlord, and, finally, at the Grand Central site we had this building with the spectacular views down Park Avenue right on top of Grand Central Terminal, a unique and a very distinguished office building, and we think—we think that the vacancy problem which you have to take into account with these buildings, of course, would have been considerably less than it would have been at the Biltmore.

So we are talking in hard dollars and cents, an economic disadvantage on the Biltmore site, which was well over \$4,000,000, plus the intangibles of vacancy rates, and things of that sort, all of which militated against it.

Overall, in economic terms, this was just a completely unacceptable level of risk and it could hardly be considered to be a substitute for Grand [478] Central Terminal for which it was offered.

Q. Did the Railroad indicate that they would want any indemnity with respect to the Biltmore? A. Yes, the Railroad did indicate that, and this is another one of those problems that confronted us in the course of these negotiations. The Biltmore is a going hotel. The Railroad took the position that once it became public knowledge that the Biltmore would get torn down, the hotel business would completely deteriorate, and the reason for this is that that hotel, like the Biltmore, there is considerable dependence on the convention business, and that kind of business is booked one to three years in advance.

If a convention manager is faced with the prospect that a hotel is going to—may be torn down, he isn't likely to book his convention there. So the Railroad took the position, with considerable justification, that they could not possibly take

the risk that a transfer would not materialize or that the developer, for some reason, would otherwise be unable to go forward with the project.

The Railroad, therefore, insisted that before it would allow a transfer of air rights from [479] Grand Central to the Biltmore or the Roosevelt, the developer would have to enter into an indemnity or a liquidated damages provision, if you will, which would compensate them for the possible loss of business as a result of the announcement that the building might get torn down.

And I think the amounts that we talked about were very, very large. They ranged anywhere from a half million to \$2,000,000, depending upon the period of time involved. So that if we had applied for the transfer and for any reason the Planning Commission or the Board of Estimate had turned us down, UGP would have had to pay over to the Railroad as much as a half million dollars to \$2,000,000.

Q. Were the considerations with respect to the Roosevelt any different from those with respect to the Biltmore? A. They were substantially the same, Mr. Stewart, with, perhaps, one position additionally, and that is the Roosevelt is further away from the transportation hub. It does not have as ready access to Grand Central, although there is a rather narrow passageway to the Terminal, but it was certainly a less attractive site in terms of proximity to the [480] transportation hub.

Q. And you mentioned one other building, 466 Lexington Avenue.

What about that one? A. 466 Lexington Avenue is the old headquarters of the New York Central Railroad. We looked into that problem. We instructed our architect to look into 466 as we, indeed, instructed them to look into all of those other sites, and it soon became very apparent that the Railroad had substantial problems with giving up that building because of the location there of the very ex-

tensive railroad communications and computer network, which, I think, was discussed at some length here before, I don't see any need for me to dwell on it.

Q. Mr. Rovet testified that when the Railroad—that the Railroad offered all of its properties in the Grand Central Terminal area for sale last year and that UGP had submitted bids on the Roosevelt and the Biltmore.

Did you, in fact, submit bids on the Roosevelt and the Biltmore?

. . .

[481] Q. Did the Railroad offer its properties in the Grand Central Terminal area for sale in 1971? A. Yes, it did.

Q. Approximately when? A. I believe it was about the middle of the year.

Q. And did UGP submit bids on any of those [482] properties? A. Yes, UGP did submit some bids.

Q. And what were your bids? A. UGP submitted two alternative package bids. The first—the first package bid was for the—for the fee interest in air rights at Grand Central—the fee interest in the Grand Central development site. It has all those things which were included in the enclave in parcel A, and the Biltmore, that is—it was a package bid for the Grand Central Terminal area, plus the Biltmore.

The second alternative bid, in the event that the first was rejected, was for the Grand Central development site and the Roosevelt. These were both package bids in the sense that both the air rights and the hotel would have to be accepted, or neither.

Q. How much did you bid on each? A. We bid three and a half million dollars for the Grand Central development area or the air rights. In each bid—It was the same in both bids, and we bid \$11,650,000, I believe, for the Biltmore, and we bid \$9,000,000 for the Roosevelt.

Q. And were your bids accepted? [483] A. Both of our bids were rejected.



Q. Why did you submit these bids? A. We submitted the bids for these reasons: Our present interest in Grand Central Terminal is that of a lessee. The Railroad was putting on the block—strike that—was putting up for sale the fee interest in those rights. It seemed to us that this was a good occasion to try to round out our interest in those air rights in the development at Grand Central.

The lease relationship is a complicated one. Much turns on its administration. We know who we had when we had the railroad and we had worked out a pretty good working relationship. We do not know who we would get if somebody else acquires the air rights, so we thought it would be a protective measure and perhaps a good opportunity to purchase the fee interest. We thought we would rather be our own landlord, so we bid on the air rights, and that was our primary interest in making these bids.

Q. Why did you include in each of your bids the two hotels, or one hotel, and one bid and the other hotel in the other bid? [484] A. Well, the reason we included the hotel—the hotels is that we recognize that litigation is uncertain. We hope that we will prevail in our challenge to the Landmarks restrictions.

On the other hand, we were concerned with the possibility that we might not prevail. We have invested thus far a very large amount of money in developing the Grand Central site, in architectural fees, in development fees of various kinds, in the course of a \$1,000,000 deposit which we have had with the Railroad now since 1968, I believe. This has been an expensive undertaking and it was our thought that if we were ultimately unsuccessful, we would like to be able to salvage something out of this long-term effort of ours so that our bid for the hotel was really in the nature of a salvage operation.

It would have allowed us to, at least, have a hotel on the site. It would have allowed us a number of options. We might have been able to do a building, perhaps a smaller

building, on the site, but, at least, it would have given us some sort of salvage out of this effort. It was not a substitute for Grand Central Terminal.

• • •

[513] THE COURT: Can we sum it up this way, that in order to avoid the confiscatory experience, this availability of air rights as was proposed, it was your position that after air rights became available as a matter of amendment to this statute, the position of your people was that economically you couldn't utilize them, you couldn't utilize the air rights, the transfer of air rights from your economic advantage, so you remained in the same position as you were originally economically, and the position is that the property was being taken without compensation?

THE WITNESS: Your Honor, I wish I could have said it that briefly. That is essentially it.

• • •

[530] Q. When did your discussions with representatives of the City Planning Commission and the Office of Midtown Planning commence in respect to developing the concept of building on the Biltmore site, do you know? A. Well, first, I think we have to make a distinction which I can't make, and that is the distinction between the City Planning Commission staff and the Office of Midtown Planning did not exist when this project was initiated. I believe that the Office of Midtown Planning was created somewhere down the road, and the same players were involved on both teams, so I don't know at which point they were wearing which uniform.

Q. When did your discussions with the representatives of the City Planning Commission commence in respect to developing the concept of building on the Biltmore site? A. As near as I can put it, there were generalized discussions about building on a number of alternative [531] sites which included the Biltmore site, and I think those discussions began around the time of the hearings on our certificate



of appropriateness before the Landmarks Preservation Commission.

Q. UGP retained Mr. Max Siegel of 1841 Broadway, did it not, to assist in the formulation of the zoning resolution regarding transfer of development rights? A. Yes.

Q. When did you retain Mr. Siegel? A. Mr. Siegel had been retained—well, I think I should revise that answer. Mr. Siegel was not retained for the purpose of assisting in the drafting of the zoning resolution. Mr. Siegel had been retained by UGP before I came aboard. He had been retained—he was already retained by UGP when I became associated with the project, and he was retained as a zoning consultant to UGP to provide it with advice on what it could or could not do on designing the building.

Q. When was he retained, do you know? A. He was retained before April 1968. Whether it was in January, February or March, I don't know. I wasn't there.

Q. You say you reviewed a certain draft of Mr. [532] Siegel with respect to a proposed amendment to Section 74-79, is that correct? A. I think I reviewed more than one draft.

Q. Do you know if Mr. Siegel ever submitted a draft of a proposed resolution to the City Planning Commission for their consideration? A. I believe that he did.

Mr. NESPOLE: May I have this marked for identification, your Honor? If the Court pleases, may I also have the envelope marked?

THE COURT: Is it important? Do you need it?

Mr. NESPOLE: The man's name is on it.

THE COURT: If there will be no issue as to its source, then it seems unnecessary.

Mr. NESPOLE: All right.

(Draft of Zoning Resolution by Max Siegel, marked Defendants' Exhibit A for identification.)

Q. Mr. Drabkin, would you take a moment and look through Defendants' Exhibit A for identification.

(Short pause.)

Q. Have you read through Defendants' Exhibit A for identification, Mr. Drabkin? A. Yes.

[533] Q. Is that the draft that Mr. Siegel submitted to the City Planning Commission in respect to the proposed amendment to Section 74-79? A. I don't know whether this is the draft that Mr. Siegel submitted or not. This is pretty much the law as it is now.

Q. You don't know of your own knowledge if that is the draft that was submitted with your approval. A. I don't know whether this was the draft that Mr. Siegel submitted or not. I recall that Mr. Siegel submitted to me a draft which was substantially the same as this or may have been the same as this, which I reviewed and which I said under the circumstances would be acceptable to us.

. . .

[559] WYLIE F. L. TUTTLE, residing at Mayfair Lane, Greenwich, Connecticut, called as a witness on behalf of the plaintiffs, having been duly sworn, was examined and testified as follows:

#### DIRECT EXAMINATION

BY Mr. STEWART:

Q. Mr. Tuttle, what is your occupation? A. I am president of Collins, Tuttle & Company, a real estate company.

Q. Could you tell us a little bit more about the operations of Collins, Tuttle & Company? Where is it located and what does it do? A. Collins, Tuttle & Company is a Delaware corporation. Our main office is at 261 Madison Avenue. It's a trademark for a series of corporations which engage in the real estate business and brokerage management, investment, and promotion. We have operations outside of New York, in Chicago, Illinois, in Los Angeles, and

in Paris, France. We are specialists in the, among [560] other things, specialists in the development and promotion and management of the construction of speculative office buildings.

Q. When did you join Collins, Tuttle & Company? A. I formed a predecessor partnership called Collins, Tuttle & Company with my late partner, Arthur Collins, on July 1, 1954. I assumed the presidency of the company in 1958 upon his death.

. . .

[584] Q. With respect to those three factors, I want to ask you how they apply with respect to the proposed building on the Grand Central Terminal site—first, with the location. A. There is no location in the United States of [585] America, in my judgment, which will be more attractive to the headquarters of major national corporations, to law firms, accounting firms, the companies that serve and support those major national corporations. There would be no more attractive location in the United States of America, in my judgment, than this building and its address.

. . .

[617] Q. So what was your conclusion as to the economic feasibility of going ahead at the Biltmore site? A. I wanted to finish with the financing. I couldn't get, without tenants, I couldn't get financing, particularly, again, the three factors, I had to get a much higher rental level. The market was nowhere near as good. The site was nowhere as good and a very important factor is that the ground rent was \$2 million higher and that became, by a long shot, the highest ground rent ever paid, and that was a serious factor, mitigating, and I was unable, and I tried for two years—the companies with whom I worked, not just the companies who were willing to furnish me the financing in 1968 for 175 Park Avenue, but I went to just about every source that was imaginable, domestic and even foreign. I went to the City of New York's [618] Comptroller's Office,

I went to the State of New York's Investment Office, I went to the New York State Teachers' Retirement Association, I went to the fifty major insurance companies, I tried to put together a consortium of savings banks, New York savings banks. They have an organization. I tried to get them to do it on the basis that they would be helping New York by having this building built.

I tried just about every imaginable way—I tried every way that I could imagine, and I have a good imagination, I think, to get this—

THE COURT: Shall we stop and take a vote?

Q. I think you've made the point, Mr. Tuttle. So, is it a fair statement—a fair summary of what you have been saying that it was your conclusion that this proposal was not economically feasible? A. Yes, sir.

. . .

[684] LAWRENCE GAINES, residing at 140 Fallon Avenue, Elmont, New York, called as a witness on behalf of the Plaintiffs, having been first duly sworn, testified as follows:

#### DIRECT EXAMINATION

BY MR. STEWART:

Q. Mr. Gaines, what is your occupation? A. Vice president for Cushman & Wakefield, Inc., 529 Fifth Avenue.

THE COURT: A little louder, please.

THE WITNESS: 529 Fifth Avenue, New York, New York, primarily engaged in the appraisal of real property in the Metropolitan area of New York and throughout the country.

. . .

[727] Q. Now, I hand you Plaintiffs' Exhibit 10. You will notice that many of the buildings are colored in yellow, which, of according to the code at the [728] top of the page are properties subject to long term ground leases.



Would it be feasible to purchase the ground lease—strike that question.

You'll also notice that all of the properties colored in orange are also subject to long term ground leases except for No. 4, which is 52 Vanderbilt Avenue.

Now, if you will look at building No. 20, 245 Park Avenue, would it be feasible to purchase the ground lease at that site and then using air rights from the Grand Central Terminal site, redevelop that location, that is, 245 Park Avenue, with a new building? A. No.

Q. In this connection I also hand you Plaintiffs' Exhibit 11 where the ground lease at 245 Park Avenue is described. A. No. This is a new office building over a million square feet in it, I believe, and it certainly would not be feasible to purchase the ground lease for redevelopment.

Q. Why not? [729] A. We have the highest and best use of the property, in my opinion, with the existing structure.

Q. Would you explain that, please? A. Well, it's the best use that you could put to the land site, and it would return the greatest return on your investment. You would derive the greatest future benefits from that.

Q. Now, would you also look at Exhibit 10, at the other sites on Park Avenue, which includes No. 21, No. 22, 24, and then running across to the other side of the street, 12, 13, 14, 15, 16 and 17, and would you also examine Exhibit 11 which describes the ground leases on those locations and tell us whether it would be feasible to buy the ground leases at those locations and redevelop the site, using air rights in Grand Central Terminal? A. It would not be feasible to purchase the air rights under these Park Avenue buildings for the purpose of redevelopment—

Q. You said to purchase the air rights. A. The underlying ground lease. For the purpose of redevelopment of property and demolishing these massive structures, including new office buildings, we have long term which they themselves are undoubtedly encumbered profitably, I presume,

with long term leases to major corporate tenants, and then redevelop the same site with the same building, it would be the same type of building—would be suicide.

• • •

[738] THE COURT: We're still sitting here the same as we started this talk between us, and that is, I take it, really, you wouldn't know what to do with these air rights outside of the plan to utilize it over Grand Central Station.

THE WITNESS: Outside of the plan to utilize the air rights over Grand Central Station, the owner of these air rights would have a problem conveying them—I should use the word "conveying" them—utilizing them—on another site at a price anywhere near the price which he could receive from the conveyance or leasing of the air rights over the existing site.

This results from the lack of marketability at the time of the particular market because of the particular market in 1969 and '70, the discounting effect which we would have to discount these air rights over the term of years that would be required to actually utilize them, [739] because there isn't a builder around that's going to pay you the full amount for those air rights until he's got a building up and producing income.

We've got to confront ourselves with a long period of time on each one of these sites. The minute we get into the area of pulling away from our immediate site, which is immediately available, which is the best site, in the best location available, at that particular time, and one of the bases for builders and one of the reasons that a market heats up is timing. A builder will build at an appropriate time. He will not build when timing is against him. This is the important aspect of putting up a building or an apartment house or anything. It's timing. You can't get away from timing. I'm putting my money up. I've got to produce a building within a certain length of time. If I've got to wait



four or five or six or seven or eight or nine or ten years to put that building up, I could put that money in the bank and accumulate an awful lot of money.

So, therefore I can only pay a discounted amount for that, and that discounting would run [740] havoc with the amount of money that somebody would be willing to pay for the total package that's available for sale over the period of years that it would take to develop it.

The idea that you can go in and just take two or three million square feet of available air rights and put it out immediately on the market and sell it immediately is a very difficult thing for me to comprehend.

. . .

[741] Q. Mr. Gaines, going back to the hypothetical questions which the Judge was asking you just before our recess, if UGP had come to you in '69 or 1970 and asked you your advice as to whether or not it was feasible to consider transferring these air rights to any of these sites which we have been discussing for redevelopment, what would your answer have been? A. That it was economically not feasible to do so.

Q. Now, will you take the Biltmore sites, specifically, and explain your answer. A. In the case of the Biltmore site, we have a 22-story operating hotel which is producing an income for the Railroad, and the Railroad's fee—not fee, but the Railroad rental would include the replacement to them of the loss of income from this hotel, were it conveyed to a third party who's to redevelop it. I was advised that the rental in total to any developer as at June 1970 would be approximately \$5 million, which is over \$1.00 a square foot more, I believe, or approximately \$1.00 a square foot more than the rental that would be charged over the Terminal.

In addition to that, this would involve the erection [742] of a major structure on a lot of 44,000-some-odd square

feet fronting on substantially narrower streets, as comparison to the development of the Grand Central Terminal site, which involved the erection of a building on a 146,000-plus square foot lot.

The Biltmore site not only involved the demolition of a substantial 22-story building, but it involved the elimination of certain leases which were in existence at that time and could delay the development of the project—protract it.

The economics with reference to operating expenses, rental value that might be attainable, the leasehold rent that was prescribed by the Railroad, or the owner of these rights, and the cost of construction, were of such a combination as to preclude the demolition and redevelopment of that site at that particular moment in time.

Q. What, in your opinion, is the maximum size of a viable building for that site? A. In my opinion, there was substantial FAR available within the site—

Q. Substantial— A. —FAR, floor area ratio, so that you could develop without any air rights almost 800,000 square feet of area [743] above grade—I think, approximately, 760,000-some-odd feet, adding in your lower area another 50 or 100,000 square feet additional, so you're going over 100,000 square feet.

To go over the million mark would put a burden on the site. Most buildings that run into a million four, a million five and a million two, or two million square feet, are situated on sites substantially larger than this site. This would require, from a point of view of construction, a substantial variance in the zoning code, and it's my understanding that this particular aspect of the project was discussed and that preliminary plans, or interim plans, were drawn which would have provided a tower structuring covering approximately 80 percent of the lot area, which was approximately 100 per cent more than you would normally be permitted under the existing code, or normal con-

struction, would run in the area of approximately 40 per cent.

This, in itself, creates a bulk hazard and confronts us with the probability, and a very reasonable one, that we would have objection, strenuous objection, from people in the area—Canadian Pacific Building and other Madison Avenue buildings, to this project, and at the very least [744] would have caused six months to a year delay which would have thrown us smack into the worst part of the rental market—in addition, the worst part of the mortgage market.

Confronted with these problems, a builder would have found himself in a position of making practically no return on his money. He'd have done better if he went into a bank and put it in a savings account as far as his net overall return was.

These are some of the factors that concern us with the Commodore Hotel, and this does not take into consideration an important factor, which we must never lose sight of, is the superiority of the location over Grand Central Terminal with its broad vista looking down Park Avenue, with its great distance from the Pan Am Building, with its unique stature as an office building potential, as an image-building for corporate headquarters, and also the flexibility because of 146,000 square-foot lot, of laying out a building for executive offices, in comparison with the laying out of a building on the Biltmore site, which would have more of a square shape, substantially more depth between the wall and the core, and substantially more lower real space, which would be—I mean, [745] lower rent in the sense of the type of client that would purchase that space, would want to pay a lower rental as the result of that one factor, also.

So that in any projection for the Biltmore site, we would have to reduce the rent, raise the ground rent, in-

crease the construction cost, increase the financial aspects of the project, and increase the vacancy allowance—and also throw in the probability that we are not ready to move ahead immediately as we were in the Grand Central Terminal, and in that respect we're talking about timing, which is the essential of the industry.

The availability of a piece of property, the ability to move ahead with your project, the ability to deliver within a prescribed period of time, these are very important functions to a builder, to a project developer, to a tenant renting space.

Q. Are the considerations for the Hotel Roosevelt the same as those you've just now stated with respect to the Biltmore? A. I would say the considerations are relatively the same except that the Biltmore Hotel has a closer proximity to Grand Central, 42nd Street. It's somewhat closer to subway transportation and it might command a slightly [746] better rental value than that which might be derived from the Roosevelt Hotel.

I don't recollect what the lease problems are, but there might be some longer term leases at the Roosevelt. I don't recollect.

Q. And what about the Hotel Barclay? A. Well, the Hotel Barclay, in this location, is a viable property, as I can see, and it is in a good location, it has good potential for development, in its present form—upgrading, or whatever else they might want to do.

It does not have the Park Avenue frontage because there is a new office building fronting on Park Avenue which blocks its development out in conjunction with a new Park Avenue building, which might have given some impetus to a higher rental.

Also, the fact of timing and leases preclude the economic development of the site in the latter part of '69 or at the



time we're talking about, '70, '71, because of the problems which might ensue.

Also, the fact that here again arises, that we have narrow streets on Lexington Avenue; we don't have as good a rental probability on Lexington Avenue that we even do on Madison Avenue, no less than that of 175 Park Avenue, [747] so that these are basic problems for a project that can not just be shunted off. You just cannot go out, pick up air rights and scatter them throughout the city without giving very intensive thought to the basic underlying economics of each individual building that these air rights are to be transferred to.

It's fundamental economics that's involved. It's dollars and cents and the bottom line that has to be reached. Many forces come into play in this, and one of the primary things, and I must go back to that, is timing. When you have a site that's available to go, you pretty well know what your problems are and you can face them. When you have sites that are not available to go, you don't know what's going to happen.

. . .

[883] FRANK MILANO, residing at 29 Turner Lane, Mt. Kisco, New York, called as a witness on behalf of the plaintiffs, having been duly sworn, was examined and testified as follows:

#### DIRECT EXAMINATION

BY MR. STEWART:

Q. Mr. Milano, what is your occupation? A. I'm the regional controller of the metropolitan region of Penn Central Transportation Company.

THE COURT: Say that again, please.

THE WITNESS: Regional controller of the metropolitan region, Penn Central Transportation Company.

Q. What is the metropolitan region? A. The metropolitan region is concerned with the operation of passenger trains in and out of Grand [884] Central Terminal. It involves a service as opposed to strictly a geographical area.

Q. What are your responsibilities in that position? A. I'm responsible for the accounting costs and revenues in the metropolitan region.

Q. Does that include Grand Central Terminal? A. That's correct.

. . .

[887] A. They were prepared by members of my staff under my supervision at my direction.

. . .

Q. Now, the heading of each of these is "Grand Central Terminal." Exactly what is meant by that phrase? A. For purposes of this exhibit, it would include the station building and the subsurface area of the station building, including the platform.

Q. The title also refers to "Revenues & Costs." What costs are included? [888] A. Basically, these are costs of maintenance and maintaining and operating the station building.

Q. Does it include any revenues or costs with respect to transportation operations? A. No, sir.

. . .

[890] Q. Will you refer, please, to 35-B, the chart for the year 1971.

Please explain the first item, "Rents and Concession Revenues." A. These are the amounts that are received from tenants and concessionaires situated in Grand Central Terminal.

Q. Then turning to "Costs"—first, let me ask you, are there any other revenues or rents which are received from any source from the Terminal building, or is this all that there is? A. Well, there are revenues which are derived



from the sale of tickets, but, of course, they're not included in this statement.

Q. Turning now to "Costs of Maintenance & Operation," the next heading, would you take each item under the heading label and explain what each one is? A. The first item involves a force of employees who are concerned with maintaining and repairing the [891] station structure.

THE COURT: Excuse me. These things are self-explanatory. I don't think we have to have any detail, Mr. Stewart.

MR. STEWART: I think that's correct, your Honor. Let me just review them. There may be one or two that need explanation.

THE COURT: I think this is fully explanatory, Mr. Stewart, for the purposes of your case.

. . .

[896] Q. When was Plaintiffs' Exhibit 35A and 35B prepared, Mr. Milano? A. In the early part of this year.

Q. In the form that Exhibit 35A is before the Court, was that document in existence prior to that time? A. In this form? No, sir.

Q. Same as to 35B; is that correct? A. That's correct.

Q. You went through certain records of the Railroad and culled certain information, is that correct, from those records to put it together; is that correct? A. That's correct.

. . .

[898] Q. Tell me, has the Railroad ever considered utilizing the waiting room for commercial purposes? A. I understand it was considered several years ago, yes.

Q. Do you know when it was considered? A. I really don't know. I was in Detroit at the time it was under consideration, I believe.

Q. As controller of the Metropolitan Region, do you know if the Railroad has considered any plans for com-

mercial use of the waiting room space in the last five years? A. I know of no specific situations, no.

. . .

[909] Q. Do you know that the Railroad has received that exemption since 1959? A. Yes, I do.

. . .

[910] Q. Under the column entitled, "labor, maintenance repair and service plant operation," under 35B, what specific crafts are included in that account? A. That includes such people as pipe fitters, sheet metal workers, iron workers, painters, carpenters, electricians. Most of them.

Q. Any other craft, sir? A. Ventilation cleaners or vent cleaners, plumbers, machinists, refrigeration operators, elevator machinists, masons—Did I mention that?

. . .

[913] Q. What are the recurring items of maintenance and repair that that labor account reflects? A. Recurring?

Q. Yes. A. There's always something that has to be done. I don't quite understand your question, Mr. Nespole.

Q. What items recur on a regular basis that are incorporated as a labor cost under that account? A. We've got plumbers, we've got carpenters. There is always something that has to be done. Just replacing light bulbs, I would imagine is quite a job.

Q. Doesn't that maintenance and repair item include costs related to the platforms? A. It may, yes.

Q. There are platforms that do not exist completely under the terminal, isn't that correct? A. The platforms do extend out possibly as far as 45th Street, but under ICC accounting the platforms are considered part of the station facility.

Q. Does the maintenance and repair account for labor there include costs for any work on any structures located outside of Grand Central Terminal [914] building? A. Outside of the building?

Q. Yes, sir. A. Well, we already talked about the possibility that they might work on the platforms, we talked about the possibility that they might be servicing the steam lines, which, of course, extend beyond the building boundaries. There is that kind of work that is included there.

Q. Are there any yard expenses subsumed in that account? A. There should not be.

Q. I agree there should not be, but are there any yard expenses subsumed in that account; do you know? A. There may be, Mr. Nespole. There may be some small amount where some of these people had to get out into, let us say, one of the towers, but they would be reasonably insignificant charges.

Q. Where are the yards located, Mr. Milano? A. I guess we've got a yard there around 49th Street. There's a yard, we call it the Madison Avenue yard, near below ground in the terminal complex.

[915] Q. How far north does the yard on Madison Avenue run, sir? A. I couldn't say.

Q. Does the Railroad use any space in the building for offices? A. In Grand Central Station? Yes, we do.

Q. Does the Railroad use any space in the building for storage? A. Probably some subsurface areas may be used for storage, yes.

Q. Do you use space for employee amenities? A. There are some small areas. There might be a locker room, I believe.

Q. Does the maintenance repair and service item include any costs related to maintenance of these areas that the Railroad uses in Grand Central Terminal? A. Yes, they would.

Q. Will you tell me approximately how much of that item is so included? A. No, I couldn't, but again I think it would be a relatively minor amount.

Q. Mr. Milano, in terms of the accounting [916] methodology employed here, does the maintenance repair and service account reflect the cost of only those items which

can be attributable to the income generated by the commercial use and concession use of the terminal? A. No, but I don't think they should be.

. . .

[919] Q. Were these statistics prepared for purposes of this litigation? A. Yes, sir.

. . .

[920] Q. Does the cleaning item reflected there relate to any costs involved in cleaning platforms? A. Probably not the platforms. I would probably—it probably would include the ramps to the platforms and possibly the stairs to the platforms.

Q. How about railroad cars? A. No, sir.

Q. Ticket booths? A. No, sir.

Q. Is there any space that the railroad utilizes in the building for its own purposes that you indicated earlier? A. Well, I guess it would include, for example, the cleaning of the station master's office and—

Q. Does the cleaning item there reflect only those items of cost which are attributable to the income generated by the rental and concession use of Grand Central Terminal? A. These costs represent the cost of cleaning Grand Central Station.

Q. The whole terminal, right? A. The whole terminal.

Q. The top to the bottom, right? [920-a] A. Yes.

Q. Are there any areas outside of the terminal that are cleaned which is subsumed in that account? A. I would say not.

. . .

[931] Q. Can you tell me what portion of that account is reflected in respect to cleaning the transportation portion of the terminal? A. How do you describe the transportation—

Q. Tell me, Mr. Milano, has there been any effort to allocate to the commercial use of the terminal a percentage of the total amount of water that's consumed in that terminal? A. No, sir.

Q. I direct your attention to "Other Direct Costs." I notice on the second sheet that item includes rubbish removal. Where is the rubbish removed from in Grand Central Terminal reflected in that cost item? A. All over the terminal building.

[933] Q. As to the "Overhead Charges," Item (E) on the second page, sir, those represent labor costs for supervisors involved in supervising the labor that is distributed under the Labor column, is that correct? A. Basically, that's it, yes.

Q. There has been no allocation of the supervision cost item there in respect to the commercial use of the terminal, has there, Mr. Milano? A. No, it followed the direct cost.

[942] Q. I believe you also testified that it was conceivable that some of the labor in this item might have been done in the yard.

Can you give us an example of the kind of work you were thinking of? A. Well, it would certainly not include any work on the tracks. There might have been a yard structure, a replacement of a light bulb in the yard structure, the replacement of a doorknob; something [943] of that nature could conceivably have been performed by some of these people under maintenance repairs and service plant operation.

Q. Is there any way to separate out such items of work if they had occurred? A. Under our present code structure there is not, but we considered it so minor that we never made the attempt to segregate such costs. They are relatively minor.

[997] BY MR. NESPOLE:

Q. Mr. Goldstone, what is your position with the City of New York? A. I am Chairman of the New York City Landmarks Preservation Commission.

Q. And when were you appointed chairman? A. On October 21, 1968.

[1006] Q. In respect to his Honor's question, Mr. Goldstone, in regard to thirty years from now, every [1007] building presently existing in the City of New York is eligible for landmark designation. Can you answer that question that the Court posed to you at this point, sir? A. I can answer it very clearly and both from policy and experience.

The Commission is highly selective in what it designates. I would imagine if I made a count through our files, we have rejected at least as much as we have designated, constantly getting requests to designate buildings that may have some local interest or some sentimental interest to a particular community or group, but are not of sufficient importance or not the best representative example or not the most viable example of the period that the Commission wants to maintain.

[1175] DONALD H. ELLIOTT, Chairman, City Planning Commission, City of New York, 2 Lafayette Street, New York, New York, called as a witness on behalf of the defendants, having been duly sworn, was examined and testified as follows:

#### DIRECT EXAMINATION

BY MR. NESPOLE:

Q. How long have you been Chairman of the City Planning Commission, Mr. Elliott? A. Since November of 1966.

[1186] THE COURT: Had Breuer I been passed upon at the time of that amendment?



THE WITNESS: I don't believe it had.

THE COURT: Let's start it this way.

As I understand it here, preceding the Grand Central Breuer No. I, by statute, by resolution of the Board of Estimate, an alternative was involved for the benefit of landowners who might be affected by the landmarks—by a landmark designation, in effect, to give such a landowner an opportunity to utilize the air rights which otherwise would be affected—which would be enjoined by the application of the landmarks law.

THE WITNESS: That's correct, your Honor, but it was after—I believe it was after Breuer I was first made public.

. . .

[1197] Q. Commissioner Elliott, the 1969 amendment was intended to expand the number of sites that could be the recipient of the Grand Central Terminal air right, [1198] was it not? A. It clearly was.

Q. There was no effort to, in any way, limit, was there? A. No, it did not. We certainly did not intend that.

Q. Are you familiar with the circumstances leading up to the enactment of the 1969 amendments to Section 74-79 of the Zoning Resolution? A. I am.

Q. Did the City Planning Commission have any discussions with representatives of the Penn Central or UGP concerning any proposals to amend Section 74-79 prior to its actual amendment in 1969? A. Yes.

Q. Can you tell us when these discussions were had and with whom? A. Well, there were numerous discussions which went on all through 1969 and in the latter part of 1968, and they were held between members of my department and representatives of Penn Central and of the developer and with the office of Midtown Planning & Development, and, of course, discussions also with the Landmarks Preservation Commission staff.

[1199] Q. Did any representatives of UGP or Penn Central ever submit to the City Planning Commission a proposed draft of the amendment? A. Yes. A representative of those organizations did submit such a proposal.

Q. Is that representative Mr. Max Siegel? A. He was.

. . .

[1202] Q. Mr. Elliott, did there come a time that Mr. Siegel told the City Planning Commission the purpose of the submission of Defendants' Exhibit A [1203] in evidence? A. We had been working with him and with other representatives of the plaintiffs on the details of this transfer legislation. That is why he redrafted the proposal, and there was a meeting which included a substantial number of the persons interested in this matter in September of 1969 when agreement was reached on the legislation.

. . .

[1205] Q. Has the City Planning Commission ever approved an air rights transfer under the 1969 amendment to Section 74-79? A. I'd have to check the records to be sure.

THE COURT: Do you know of any now?

THE WITNESS: We have discussed a number of them.

Q. Was the Amster Yard transaction ever approved? A. Yes, it was.

[1206] Q. And where is the Amster Yard located, sir? A. It's in—it's right in midtown Manhattan, and I can't give you the exact block, but it is on Second Avenue, and in a very—it's a sophisticated, very much loved historic district, low-rise district, and we did approve a transfer off of that district.

. . .

Q. Can you tell us the circumstances, as you recall them, of the Amster Yard transfers? A. The Amster Yard had a very substantial amount of unused air rights. It's a courtyard with small two story buildings around it, and the trans-

fer was to [1207] take the air rights off of that and to transfer them to an office building on the end of the block so as to—well, it's to use the rights which made it easier to preserve the Amster Yard and to continue its maintenance just as the statute provides.

Q. The transfer was approved, was it not? A. It was approved.

Q. The building was not built, however; is that correct? A. That is correct. The building was not built but the transfer was approved and was greeted very enthusiastically.

. . .

[1217] Q. After the amendment to Section 74-79 of the zoning resolution, did the City Planning Commission expect an application to transfer from Grand Central Terminal to the Biltmore site? [1218] A. We did. We worked out virtually all of the details of that application prior to the time the legislation was taken, the hearing, and subsequently passed.

THE COURT: You may tell me what the record is in your department of those activities and their status at the time the amendment was proposed. How far had it gone?

THE WITNESS: Well, it had gotten down to the discussion as to the location of the plazas, the location of the escalators, the question of whether there should be a one or two-foot setback on certain streets. What I would consider design details had been discussed at length by members of my department and presented to the Planning Commission for its review prior to the time that we took the legislation to public hearing.

THE COURT: Let me ask you this.

Assuming consummation of such an agreement between the parties, as the Landmarks Commission on the one hand and the plaintiffs on the other, the agreement to utilize the air [1219] rights over Grand Central on the Biltmore site,

did that require any formal action on the part of your Commission?

THE WITNESS: It would.

THE COURT: Would it require a hearing, too?

THE WITNESS: It would.

THE COURT: A public hearing.

THE WITNESS: A public hearing.

THE COURT: All right. It got to the point where, assuming that the amendment was adopted, you'd be ready to go to a hearing on the plaintiffs' proposal.

THE WITNESS: The proposal had been made in generalities in April of '69 and our testimony before the Landmarks Preservation Commission. The statute, when it was taken to hearing, was unopposed at the public hearing and passed the Board of Estimate in the same manner, and we were confident that any application which flowed from it would be treated exactly the same way.

THE COURT: So that now the situation is [1220] this, as far as the City is concerned—when I say the City, I mean the Planning Commission and the Landmarks Authority—were ready to have the proposal effectuated and then something happened, as a result of which nothing happened, is that it?

THE WITNESS: That is correct.

THE COURT: Go ahead, Mr. Nespole.

BY MR. NESPOLE:

Q. Mr. Drabkin, counsel for UGP in this case, the plaintiff, has testified that the transfer of development rights, once effected, is irrevocable.

Is such a transfer irrevocable under Section 74-79? A. If they use the rights on a transferee site, they can't come back and use them over again on the landmarks site.

Q. Other than under that set of circumstances, is the transfer ever irrevocable? A. If they don't use them, then it is not.

. . .

[1254] JACQUELIN T. ROBERTSON, Director of the Office of Midtown Planning & Development, City of New York, 220 West 42nd Street, New York, New York, called as a witness on behalf of the defendants, having been duly sworn, was examined and testified as follows:

[1255] DIRECT EXAMINATION

BY MR. NESPOLE:

Q. Mr. Robertson, what is your present position? A. I'm the Director of the Office of Midtown Planning & Development.

Q. How long have you held that position, sir? A. Since April of 1969.

Q. Were you employed by the City of New York prior to that time in any other position? A. I was a principal urban designer in the City Planning Commission.

Q. How long were you so employed, sir? A. Since the spring—May of 1967.

Q. What is your academic background, sir? A. I'm an architect. I was trained as a political scientist. I have a Bachelor of Arts degree in political science; a Master's degree in politics, philosophy and economics; and Bachelor of Architecture. That's it.

Q. Are you a licensed architect, sir? A. I am.

Q. Licensed by the State of New York, sir? A. Yes.

. . .

[1267] Q. Did you attend any meetings with representatives of Penn Central and UGP regarding construction over Grand Central Terminal? A. I did.

Q. When did these discussions commence? A. I think my first meeting was in March of 1968, and these meetings continued through until the end of 1969.

Q. Who attended these meetings? A. Aside from members of my own staff and the City Planning Commission, Norman Marcus, Richard Buford, the members of the Penn Central Railroad, real estate division, Sam Hellenbrand, the architects, Mr. Breuer, Mr. Beckhard, Murray Drabkin, representing the developer, Max Siegel, a zoning consultant for the developer.

Q. Did Mr. Saady ever attend any of these meetings, sir? A. Yes.

Q. How many of those meetings did he attend, do you recall? [1268] A. One that I'm sure of, and I know that I met with Mr. Saady on at least two other occasions.

. . .

[1288] Q. Did there come a time during the course of the discussions that representatives of the Railroad in UGP that transferring the developments from Grand Central Terminal to another site was discussed? A. Yes, there did.

Q. When was that discussion had? A. Specifically—the first specific proposal was on September 11th—

Q. And what—

A. —1969.

Q. What sites were discussed? A. The Biltmore site.

[1289] Q. Who was present at the meeting? A. Mr. Saady, Mr. Drabkin, Mr. Hellenbrand, I think Max Siegel, the architect, myself, Mr. Marcus, Mr. Baddell, my deputy. There may have been someone else. That is the best of my recollection.

Q. Did there come a time during the course of that meeting that an agreement was reached in respect to transferring the development rights from Grand Central Terminal to the Biltmore site? A. Yes.

Q. What was that agreement, if you recall? A. The agreement was that we would—we, being the City, would move to—as quickly as possible to get the necessary transfer legislation through the Planning Commission of the



Board of Estimate. The agreement on the part of the developer was that he would move along the lines of developing a transfer of about, as I remember, a million three, a million four, from Grand Central site to the Biltmore site, the Biltmore would be demolished, a new building would be built on the Biltmore site and he would make an application for that building once the legislation was approved. There are a lot of details that we [1290] worked out.

THE COURT: To whom do you attribute that accord? Who particularly said that?

MR. NESPOLE: May we get to that next at this point?

THE COURT: That is what I am interested in knowing.

The witness said the developer agreed. I wonder who spoke for the developer.

Q. Which member of the developer's party indicated this agreement to you? A. Mr. Saady.

Q. And how did he indicate the agreement to you, Mr. Robertson? A. At the end of the meeting we shook hands that each would do his part to bring this to fruition.

Q. And what was the understanding in respect to the obligation of the developer and what was the understanding in respect to the obligation of the City? A. The City was to prepare the necessary transfer legislation—legislation that was subsequently approved. The developer was to develop along the [1291] lines that we discussed during that meeting, a specific proposal which he had brought to that meeting to build a building on the Biltmore site of, roughly 2,100,000 square feet.

THE COURT: What you are telling me by "legislation," you're referring to eventually the amendment of the zoning resolution to incorporate the extension of the transfer of air rights to a so-called adjoining owner?

THE WITNESS: That's correct.

THE COURT: You are speaking specifically of the 1969 amendment?

THE WITNESS: Right.

THE COURT: And on that question is it your position and do you say that that amendment was entirely or mainly the product of these discussions and the agreement to which you've referred?

THE WITNESS: Yes, sir.

Q. Did Mr. Saady tell you at that time that he thought a building on the Biltmore site was not economically feasible?

THE WITNESS: No, he did not.

[1292] Q. Did they operate under any assumption in respect to the feasibility of the Biltmore building? A. Not that I know of. They expressed willingness to put a lot of detailed work into trying to make that viable proposition.

Q. Did there come a time when you saw certain plans proposed by the developer in respect to the Biltmore site?

A. We saw detailed plans over a two-month period of time.

Q. Did there come a time as to whether or not any agreement—withdrawn.

Did there come a time that any agreement was reached in respect to specific proposals about a building on the Biltmore site? A. Yes.

Q. What kind of an agreement was reached and in respect to what proposal, sir? A. Well, the agreements were, roughly, in relation to the open space, the Plaza that is—that would qualify the site for Plaza bonuses where the Plaza would be its size, the kinds and numbers of trees that would be planted in it, the kinds of access that [1293] would be made to the subway and the Grand Central Station concourse, the potential of building a bridge above the street level connecting into Grand Central Station itself. A whole variety of detailed architectural planning questions

was discussed and agreed upon as we went along in these negotiations.

Q. Approximately what period of time are we talking about now, Mr. Robertson? A. Between September and the end of October.

Q. Did Mr. Hellenbrand, whom you have indicated was the representative of the Railroad, ever state that he approved of the agreement to build on the Biltmore site? A. I can't remember whether he ever said that he approved. He certainly negotiated in the vein that would lead us to believe that this was his intention. Yes, we worked pretty hard on those negotiations.

[1294] Q. Was the decision to build on the Biltmore site announced publicly? A. No, it was not.

Q. Why was it not announced publicly? A. It was mutually agreed, at the request of the developer, that it would be inadvisable to talk about tearing down the Biltmore at that time, there were certain union contracts and problems associated with those and they didn't want to alert anyone to the fact that they may be tearing down the Biltmore.

Q. Was that in respect to the union, sir, representing the employees of the Biltmore Hotel? A. That's correct.

Q. During the course of these negotiations, were there any other sites other than the Biltmore discussed? A. As I said earlier, we looked at a variety of sites: the Commodore, the Roosevelt, 466 Lexington, any number of possible sites to which Grand Central square footage could be transferred, yes.

Q. Were you present this morning when Mr. Elliott testified? A. Yes, I was.

. . .

[1312] BY MR. NESPOLE:

Q. Based upon your experience as Director of the Office of Midtown Planning, Mr. Robertson, can you tell us what major American corporations have their headquarters on Madison Avenue?

THE COURT: Wouldn't it be a form of free advertising? We know there are a lot of big corporations there.

A. Union Carbide, IBM, Look, Newsweek.

. . .

[1330] Q. Prior to the passage of the amendment in August, 1969, of Section 74-79, did you or anyone under your direction make any effort to determine if the air rights over the Grand Central Terminal were marketable? A. Yes.

Q. What efforts did you make? A. Dick Buford and I contacted a major real estate developer in New York, to see if he would be interested, theoretically, in that kind of transfer deal.

[1331] Q. Who did you contact? A. Harry Helmsley.

. . .

[1344] THE COURT: Let me interrupt you.

At that stage, you were then to go forward with remedial legislation.

THE WITNESS: Yes, sir.

THE COURT: To possibly accomplish the air rights.

THE WITNESS: Yes.

THE COURT: To have a building on the present site of the Biltmore.

Now, what happened after September of 1969?

THE WITNESS: It was the 11th. That was the first meeting at which the Biltmore was discussed as a real alternative.

THE COURT: What happened?

THE WITNESS: We worked mutually with the Breuer firm and with Mr. Drabkin and Mr. Hellenbrand on details of that specific project, and on our end we refined the legislation, introduced it for public hearing to the Planning Commission in October.

It was approved by the Planning Commission, [1345] if I'm not mistaken, in November, and by the Board of Estimate in December.

At that time, we had expected that there would be an application by the developer to carry out the project on the Biltmore site.

THE COURT: How did you become aware of that?

THE WITNESS: Well, he didn't come in to us with an application.

THE COURT: To what extent did they follow the course of the amendment through the Board of Estimate?

THE WITNESS: They did follow it.

As Chairman Elliott testified this morning, there was no objection at the hearing before the Board of Estimate.

THE COURT: Representatives of the plaintiffs.

THE WITNESS: Yes, and it had been understood, obviously, by us and the owner and his team of consultants that they would of course not object to the hearing before the Board of Estimate, since this was what was going to allow them to move ahead.

. . .

[1409] Q. Mr. Robertson, can you tell us under Zoning Resolution Section 74-79 what total F.A.R. is permitted to be transferred to the Biltmore site from the Grand Central Terminal site? A. I think it's about two million one. That may be inaccurate. I think it's close to that, as I recall it.

Q. If Breuer I or Breuer II were to be constructed on Grand Central Terminal site, would the building—would the railroad be able to utilize the total permissible zoning bulk under the Zoning Resolution on that site? A. They would not.

Q. And why not, sir? A. They could not benefit from plaza bonuses on that site.

[1410] Q. If the Railroad were to proceed on the Biltmore site, could they utilize the total permissible zoning bulk under the Zoning Resolution on that site? A. Provided that they provided the plaza.

Q. Approximately, how much F.A.R. would that equal, sir? A. Well, it is three F.A.R., depending on whatever the total of the site is.

. . .

[1423] Q. Does it refresh your recollection as to whether or not the City had plans in July to go ahead with legislation amending the zoning resolution? A. Yes. I think, as I indicated, we were inclined to move in that direction.

THE COURT: I suppose we can ask now, is the contemplated amendment of this resolution tailored to meet this situation? Is it intended specifically for the Grand Central situation, or was it in contemplation [1424] in respect to additional matters or other matters?

THE WITNESS: The latter.

. . .

THE COURT: I must assume, then, that the amendment to the zoning—I must accept, rather than assume, that the amendment to the zoning resolution was motivated and directed directly towards ameliorating the Grand Central situation.

THE WITNESS: We had been moving, during this entire time, with all of our zoning resolutions, towards policies which would give us more flexibility in dealing with this kind of situation specifically.

THE COURT: The Grand Central situation [1430] brought it to a head.

THE WITNESS: It brought it to a head.

THE COURT: Doesn't that dispose of that, Mr. Stewart?

MR. STEWART: I think so, your Honor.

I have one question.



BY MR. STEWART:

Q. Would the legislation have come into being if there hadn't been any Grand Central situation? A. I don't know.

\* \* \*

[1440] Q. Mr. Von Ancken, what is your occupation? A. I'm a real estate appraiser with the firm of William A. White and Sons, where I'm vice-president of the company and in charge of the real estate appraisal department.

\* \* \*

[1462] Q. What in your opinion is the rent that Penn Central could get by leasing the development rights over Grand Central Terminal to other sites eligible [1463] under Section 74-79 of the Zoning Resolution to receive such rights? A. The rent that I think that is a fair and just rent is \$1.70 a square foot. However, in this analysis I have not used the \$1.70 a square foot. I have applied a discount factor of 15 per cent to that \$1.70 and came up with an estimated rental value for the air rights of \$1.45 a square foot.

Now, the discount factor was applied in order to stimulate interest, immediate interest in the purchasing or leasing of the air rights. There is also another basis for the discount factor, and that is an analysis of the extra profit that is generated by an individual who would lease one, or one million or two million square feet of development rights. There is a certain inherent profit that the individual generates from leasing an extra square foot of office space.

Let me give you an example.

In the Biltmore site you can presently build on the site a building of approximately 800,000 square feet without any air rights. If you purchased 1.2 million square feet of air rights or leased them, [1464] you would have a building comparable to what was proposed by Breuer of 2,150,000 square foot net. The rent that you could get for this build-

ing in the market place, I will estimate at \$10.50 a square foot.

Now we can work this on a per square foot basis and work backwards and find out what is left over to pay for the air. Mainly, you have operating taxes—operating costs and taxes, which would come to approximately \$3.70 in today's market, you have a construction cost for the building of, say, \$45 a square foot, which is higher than what is indicated in the report, but for rounding purposes we'll use the highest figure, and your constant mortgage rate would be 9.5 per cent, which would equal a payment for the mortgage and for the construction of the building of \$4.27 a square foot.

Adding those two figures together you come up with the \$8 a square foot of rent that's required to make the building pay for itself.

Now, over and above \$8 you have two factors. You have profit and payment for air rights. If you estimate your profit at 10 per cent of the total [1465] package, that leaves you—that would be \$1 approximately, and it leaves you with \$1.50 a square foot as payment for the air rights.

Q. In other words, Mr. Van Ancken, your analysis proceeds on the assumption that the air rights used on another site generates additional income on that site; is that correct? A. That's correct.

Going back to the Biltmore site it would generate on the Biltmore site approximately \$1,200,000 additional income that they wouldn't get from developing an 800,000 square foot building.

Q. So that the value, the market value you placed on the development rights through the transfer is directly correlated to the amount of income that that would generate plus the cost involved in generating that income; is that correct? A. That's correct.

\* \* \*

[1532] THE COURT: Yes. I say, well, here you have the owner of the air rights saying, I have a chance—the owner of Grand Central is saying to you, as a broker, or as an expert in the field, as an appraiser—I have the chance here to use my air rights on my Biltmore property by demolishing the Biltmore Hotel and substituting it with a multi-story skyscraper.

You've considered all of the respective factors. What would you advise him? Go ahead.

THE WITNESS: I would say, go ahead, with one qualification. Only lease approximately half of the air rights available over the Terminal and let the Terminal have the balance to rent to other sites; because in my estimation, it wouldn't make any sense to build a 3,000,000 square foot building—I think the optimum is 2,000,000 square foot building over the Biltmore.

[1574] Q. Can you compare the Biltmore site to the Grand Central Terminal site in terms of, say, the flexibility regarding the plazas, arcades, setbacks, building shape, placement of stores, for us? A. Yes. Well, under the Breuer I—no I changed that. The lease to UGP Properties, Inc. limits the type of development that could be placed over the Terminal. This limitation is not—would be placed on the Biltmore site. You could place the building in any area of the plot; you could have your stores facing on four sides, you could have ingress traffic for pedestrian ingress from four sides, which you could not have on the Terminal site.

You would have four views, when the Terminal site—you are actually restricted to three views, two [1575] narrow views and one view looking south.

The northerly view would be greatly blocked by the Pan Am Building, which would be only 250 feet away. You have more flexibility in allowing for your plazas, the placement of the plazas, the lobby space, the entrance space, where it is to be placed on the plot.

Q. In terms of the streets surrounding each site, namely the Biltmore site and the Grand Central Terminal site, as a real estate appraiser how would you evaluate these adjacent streets as to their respective prestige factors? A. Well, Vanderbilt Avenue is similar for both sides. Madison Avenue is far superior to 42nd Street.

Q. 42nd Street would be the southernmost street on the Grand Central Terminal site building, would it not? A. Yes, it would be. It would be the place where people enter into the building.

[1578] Q. What is the address that Mr. Breuer lists for the Biltmore site building? A. 333 Madison Avenue.

[1579] Q. Is Madison Avenue as prestigious a street, or more prestigious than 42nd Street? A. My answer is it's far more prestigious, more distinguished, has better quality than 42nd Street.

Q. What is the basis for that opinion, Mr. Von Ancken? A. Madison Avenue has major corporations located along—such as the IBM, Union Carbide, Newsweek, Look, Occidental Petroleum, Carrier Corporation, Johns-Manville, Sperry-Hutchison, Litton Industries, Associated Transport.

And then it has the major advertising companies, such as Batten, Barton. Durstine & Osborne and Young & Rubicam.

[1580] It has a better quality of tenancy.

The stores are of high quality.

The rents are higher than the rents that they receive on 42nd Street.

[1582] Can you compare the view from a building on the [1583] Biltmore site, as contrasted to a building on top of Grand Central Terminal? A. Yes. The view on the Biltmore site would be superior. You'd have a four-way view



as opposed to a three-way view in Breuer I and Breuer II Revised. The northerly view of Breuer I and Breuer II Revised would be facing the Pan Am Building. The Breuer buildings would be just as wide as the Pan Am Building and would look directly at it. It would be a rectangular building and a large portion of the rectangle would be facing the Pan Am Building; but the Hotel Biltmore would be more of a square shape building, where you have more utilization of the floor space and better views in comparison to the shape.

Q. Mr. Von Ancken, there's been testimony in this case that the rectangular shape of the building to be built on top of Grand Central Terminal was preferable to the square building that would be built on the Biltmore site.

Do you agree or do you disagree with that opinion, and why? A. I disagree with that opinion. The square shape site has an equal access to the central elevator bank, whereas [1584] the rectangular shape—normally, the elevators are placed at the center, they're a long distance away from the outer wall on the small sides of the rectangle. Also, in this particular case, it's a view factor. They have a broad wall, over 300 feet long, that faces the broad wall of the Pan Am Building.

Q. Did the building on top of Grand Central Terminal provide for any plazas and other open space? A. No, there was no provision for plazas.

Q. Did the Biltmore site plans, introduced here by the plaintiff, provide for any plazas or open space? A. Yes, there was a plaza off Madison Avenue.

Q. Is there any advantage in terms of rentability of a building to have plazas and open spaces? A. Yes.

Q. What is that advantage? A. Well, it gives a more open effect to the building. It enhances the entranceway into the building and the lobby appearance of the building.

Q. Does it bear any relationship to the extent of commercial space that's available? A. Well, sometimes it does.

You could do what they did for the General Motors Building on Fifth Avenue and 59th

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[1635] Q. Shouldn't the expense of removing rubbish from the track area which might create a fire hazard properly be included as one of the expense items in your chart on pages 12 and 13? A. Absolutely not. It's a Railroad expense item. It's necessary for the Railroad to remove the trash to avoid injury to the passengers, which might be near the tracks or on the platform. It's the Railroad's absolute necessity to clean their own tracks in order that any cars that may be on the tracks might not burn up if trash caught on fire located underneath the cars, or if an engine exploded underneath the Terminal, due to a piece of trash catching on fire. It's the Railroad's duty to remove that in order to cut down on their own insurance [1636] premiums.

Q. You're saying, I take it, then, that you disagree with Mr. Milano that the Railroad had any duty to remove such trash to the extent that it might create a fire hazard for the Terminal as a whole?

MR. NESPOLE: Objection, Judge. It's not what he's saying. He's saying they had to remove the trash in order to make the trains run safely.

MR. STEWART: All I am suggesting, your Honor, is that there are two reasons for removing the trash: One, the operation of the railroad cars; and the other, the operation of the building.

I will pass on to the next question.

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[1664] Q. I will accept that. Now, if in 1971 the air rights, or a portion of the air rights over Grand Central Terminal had been transferred to those three sites, and if they were developed or redeveloped, wouldn't the Railroad have lost that two million five hundred thousand dollars of revenue,



of cash flow? A. Absolutely not, because you would have a basic payment for the hotels themselves and you would have an excess payment of the three million, four hundred thousand dollars that I've indicated for the air rights.

For instance, there was an offer made for these hotels, say fifteen million dollars a piece. Now, the fifteen million dollars a piece totals forty-five million dollars. If you were to rent these hotels for land purposes under a long term lease, an individual might be willing to accept a nine percent return under a land lease for these hotels, so that would be nine percent of [1665] forty-five million dollars or four million, five hundred thousand dollars that the Railroad would get just by leasing these hotels, just as hotels, based on their offer.

Q. You're assuming, I take it, that the Railroad would require an amount in the ground lease of these hotels which would reflect, among other things, the income lost. Is that what you're saying? A. No, I'm saying that—if we deal with the Hotel Biltmore, it currently derives an income of cash flow income of \$450,000 a year. If there was an offer made for the Hotel Biltmore of \$15 million, \$15 million as a sale, and we can interpolate that sale into a lease price, just using nine percent on \$15 million, as a fair return under a net lease, and that would indicate a return per year for the hotel of a million, three hundred fifty thousand dollars, just for the hotel, with the eight hundred thousand square feet of air over the hotel as compared to \$450,000 that is currently generated, which is about \$900,000 difference.

. . .

[1675] THE COURT: Do you know of any active interest in the acquisition of these air rights on the part of developers or brokers or both?

. . .

[1676] Q. You say you have heard of interest in air rights?

. . .

THE WITNESS: I know that there are people who are bidding on the hotels who are also interested in using the air rights.

I know that the owners of the—

THE COURT: Give us names and details.

THE WITNESS: I can tell you of one specific case. The owner of the East Side Airlines Terminal Building, which is a 20,000 square foot plot located on 42nd Street and Park Avenue, it's a four-story building, the owner is Goldman-DiLorenzo. Those people would be very interested in renting the air rights over the Terminal.

THE COURT: Who told you that?

THE WITNESS: The person who told me that was Louis "Madback," president of our company, who in turn talked to Goldman-DiLorenzo, [1677] to Sol Goldman, about air rights over the Terminal.

THE COURT: How long ago?

THE WITNESS: This was about a month ago.

THE COURT: Has anything been done to try to arrive at a deal?

THE WITNESS: No because that is the biggest stumbling block, because we as brokers cannot represent Penn Central when there's a case still pending and they don't know whether these air rights would still be available or not.

THE COURT: That's been a deterrent to this firm, you say? They could go out and get another broker, couldn't they?

THE WITNESS: No, it would be a deterrent to any broker because the broker would have to get clearance from Penn Central to represent Penn Central in their negotiations.

. . .

[1680] Q. How long would it take, in your opinion, to transfer all of the air rights to other locations to which they can be transferred? [1681] A. I would estimate approximately two to three years.

THE COURT: I don't quite get that. Is your question, how long would it take—and I add: to effect a transfer?

The witness says two or three years.

MR. STEWART: Let me ask another question, your Honor.

Q. How long would it take to consummate agreements with respect to the transfer of all of these air rights to lessees or purchasers, and is your answer still the same?

A. The initial bulk of the air rights would be immediately, but the disposition of the last 500,000 or 800,000 square feet would be over a period of two to three years.

Q. What do you mean by the "initial bulk"? A. The bulk that's required to build on one of the hotel sites, approximately a million—

• • •

[1732] Q. Would you turn to page 29 of your report, please?

What is the purpose of this comparison? A. The purpose of the entire comparison is to indicate what the—what the net rent would be if Breuer I or Breuer II was constructed in order for the building to have a profit and in order for the building to break even.

Q. And why is the Biltmore included? A. The Biltmore is included on the schedule to indicate that if the Biltmore building was built today the rent per square foot would be less than what was the proposed rent for Breuer I and II in late 1968.

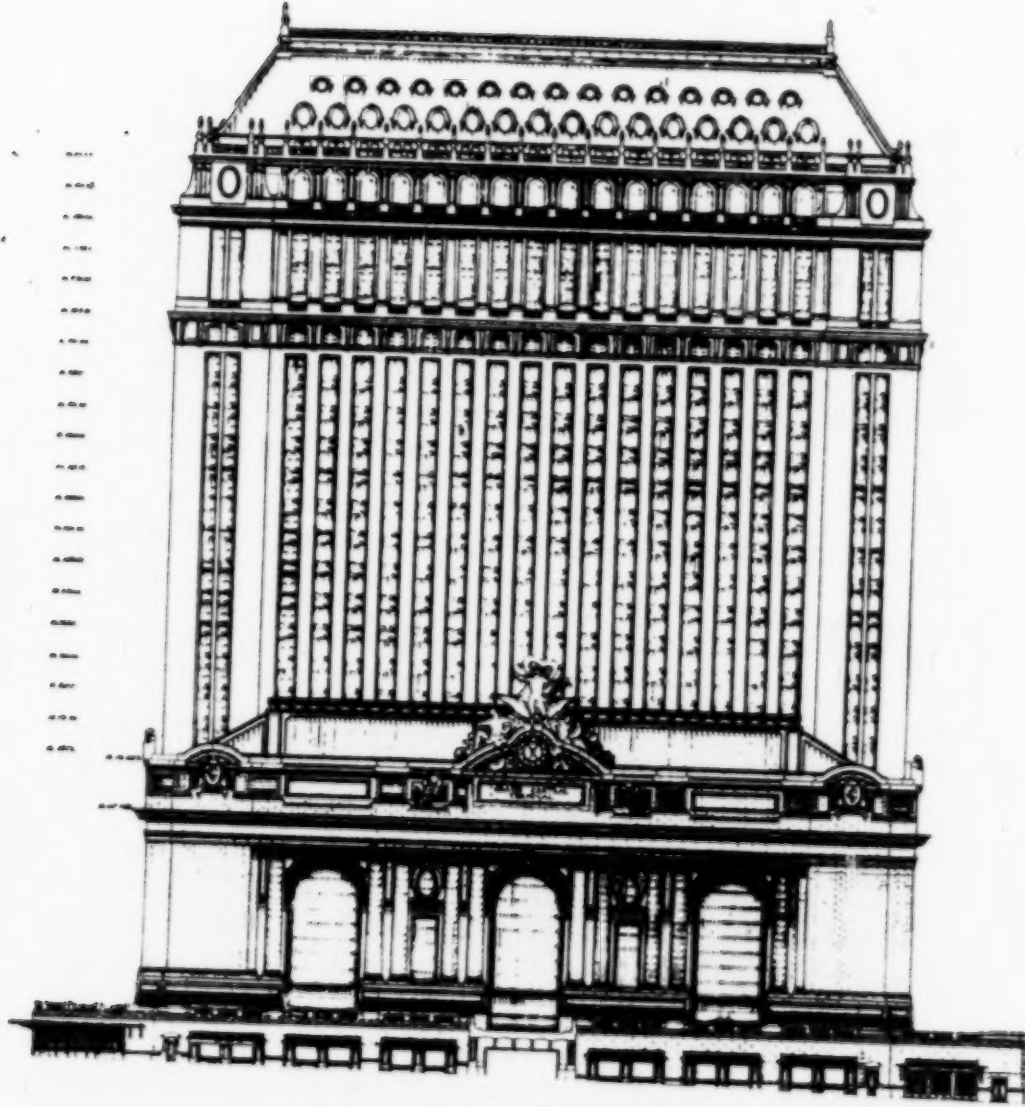
Q. Are you suggesting by this analysis that it would not have been possible to construct the building at an economically feasible cost in the middle of 1968?

THE COURT: Do you mean the Biltmore?

MR. STEWART: No, sir. I meant to say on top of the Grand Central Terminal.

THE WITNESS: I am saying it would cost far more to build the building over the Terminal, [1733] over the southerly section of the Terminal, than it would cost to build a normal office building.

• • •



## Exhibit 8

ASSESSED VALUATION AND RATES FOR TAX BLOCK 1280 Lot 1  
AND GRAND CENTRAL TERMINAL BUILDING

|                                   | 1967-68      | 1968-69      | 1969-70      | 1970-71      | 1971-72      | 1972-73      |
|-----------------------------------|--------------|--------------|--------------|--------------|--------------|--------------|
| Non-Transportation Part (Taxable) |              |              |              |              |              |              |
| Land                              | \$2,530,000  | \$4,270,000  | \$4,500,000  | \$7,200,000  | \$ 7,900,000 | \$ 8,900,000 |
| Building                          | 1,780,000    | 1,540,000    | 1,540,000    | 2,500,000    | 2,500,000    | 2,700,000    |
| TOTAL                             | \$4,310,000  | \$5,810,000  | \$6,040,000  | \$9,700,000  | \$10,400,000 | \$11,600,000 |
| Transportation Part (Tax Exempt)  |              |              |              |              |              |              |
| Land                              | \$14,320,000 | \$14,280,000 | \$15,050,000 | \$14,600,000 | \$16,000,000 | \$16,100,000 |
| Building                          | 5,525,000    | 5,765,000    | 5,765,000    | 5,760,000    | 5,753,000    | 5,730,000    |
| TOTAL                             | \$19,845,000 | \$20,045,000 | \$20,815,000 | \$20,360,000 | \$21,753,000 | \$21,830,000 |
| Tax Rate                          | .05110       | .05244       | .05540       | .05906       | .06001       | .06500*      |
| Tax on Non-Transportation Part    |              |              |              |              |              |              |
| Land                              | \$ 129,283   | \$ 223,919   | \$ 249,300   | \$ 425,232   | \$ 474,079   | \$ 578,500   |
| Building                          | 90,958       | 80,758       | 85,316       | 147,650      | 150,025      | 175,500      |
| * Estimated                       |              |              |              |              |              |              |

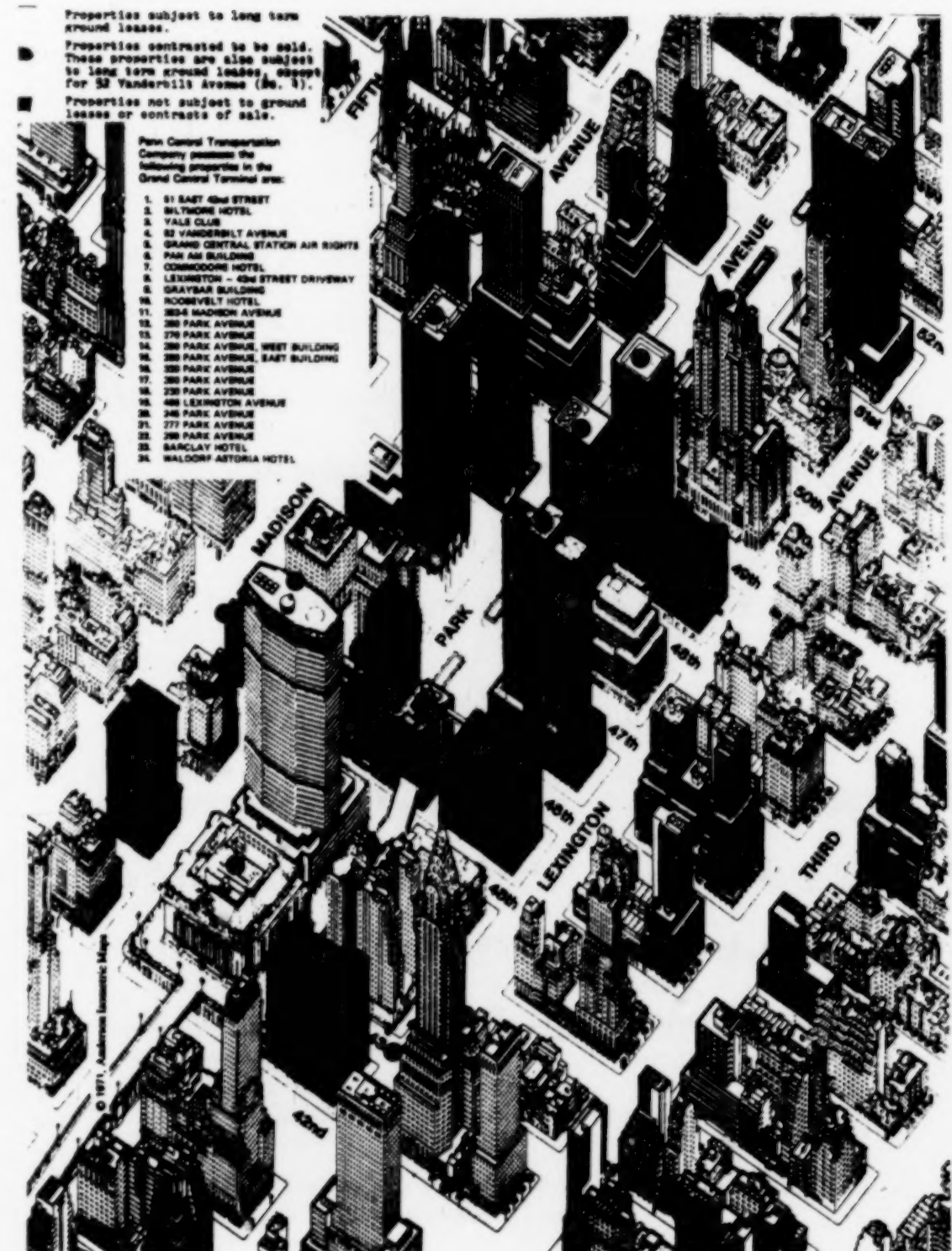


## Exhibit 9

NET TRANSFERABLE ZONING FLOOR AREA  
FROM  
GRAND CENTRAL TERMINAL PARCEL A

|   |                   |
|---|-------------------|
| Area of Grand Central Terminal Lot:   | 134,202 sq. ft.   |
| Maximum Permitted Zoning Floor Area as<br>of Right (Lot Area $\times$ Floor Area Ratio<br>of 15): | 2,013,030 sq. ft. |
| Bonus Areas:  | 402,606 sq. ft.   |
| Total Zoning Floor Area with Bonuses<br>(Lot Area $\times$ Floor Area Ratio of 18):               | 2,415,636 sq. ft. |
| Existing Zoning Floor Area:   | 264,642 sq. ft.   |
| Net Transferable Zoning Floor Area:   | 2,150,994 sq. ft. |

## Exhibit 10—Diagram of Portion of Manhattan Island



## Exhibit 11

PROPERTY POSSESSED BY PENN CENTRAL TRANSPORTATION  
COMPANY IN GRAND CENTRAL TERMINAL AREA SUBJECT TO  
LONG-TERM GROUND LEASES AND CONTRACTS OF SALE

## PROPERTY SUBJECT TO LONG-TERM GROUND LEASES

| <u>Property</u>                        | <u>Lot Area<br/>(Sq. Ft.)</u> | <u>Description</u>                     |
|--|-------------------------------|--|
| 51 East 42nd Street                    | 10,251                        | 17-story office building               |
| Yale Club                              | 9,105                         | 22-story club                          |
| Pan Am Building                        | 150,701                       | 59-story office building               |
| Lexington-43rd Street<br>Driveway Area | 9,000                         | Parking lot                            |
| Graybar Building                       | 68,303                        | 29-story office building               |
| 383-5 Madison Avenue                   | 43,313                        | 13-story office building               |
| 250 Park Avenue                        | 24,970                        | 20-story office building               |
| 270 Park Avenue                        | 80,332                        | 52-story office building               |
| 320 Park Avenue                        | 16,600                        | Portion of 33-story<br>office building |
| 277 Park Avenue                        | 81,337                        | 50-story office building               |

| <u>Ground Tenant</u>                      | <u>Lease Expiration<br/>Date (Subject to<br/>Renewals)</u> | <u>Renewals</u>  |
|---|--|--|
| 51 East 42nd Street<br>Corporation        | Jan. 31, 1987  | None   |
| The Yale Club of<br>New York City         | Sept. 30, 1997   | None   |
| Grand Central<br>Building, Inc.           | Apr. 30, 1997  | Two 21-year renewal<br>terms   |
| Lexington-43rd, Inc.                      | May 31, 1976   | One 11-year, 7-month<br>renewal term and<br>two 21-year re-<br>newal terms |
| Metropolitan Life<br>Insurance<br>Company | May 31, 1976   | One 11-year, 7-month<br>renewal term and<br>two 21-year re-<br>newal terms |
| The Manhattan<br>Savings Bank             | Apr. 30, 1987  | None   |
| 250 Park Avenue<br>Corporation            | Mar. 31, 1987  | Two 21-year renewal<br>terms   |
| Union Carbide<br>Corporation              | Dec. 31, 1975  | Two 21-year renewal<br>terms   |
| Uris 320 Park<br>Corporation              | Dec. 31, 1990  | Two 21-year renewal<br>terms   |
| Stahl Equities<br>Corporation             | June 30, 1991  | Two 21-year renewal<br>terms   |

\* Subject to Landlord's right to refuse second renewal term on paying the then value of building.

\*\* Subject to Landlord's right to terminate as of March 31, 2018 upon payment of the then value of building.

## Exhibit 11

| <u>Property</u>       | <u>Lot Area<br/>(Sq. Ft.)</u> | <u>Description</u>       |
|-----------------------|-------------------------------|--------------------------|
| 299 Park Avenue       | 40,166                        | 42-story office building |
| Waldorf-Astoria Hotel | 81,337                        | 44-story hotel           |

PROPERTY SUBJECT TO CONTRACTS OF SALE AND LONG-TERM  
GROUND LEASES

|                                  |        |  |
|----------------------------------|--------|--|
| 280 Park Avenue<br>West Building | 12,000 | 16-story office building               |
| 280 Park Avenue<br>East Building | 24,970 | 30-story office building               |
| 350 Park Avenue                  | 15,062 | Portion of 30-story<br>office building |
| 230 Park Avenue                  | 69,154 | 34-story office building               |
| 245 Park Avenue                  | 81,337 | 47-story office building               |

## PROPERTY SUBJECT TO CONTRACT OF SALE ONLY

|                      |       |                          |
|----------------------|-------|--------------------------|
| 52 Vanderbilt Avenue | 9,105 | 20-story office building |
|----------------------|-------|--------------------------|

| <u>Ground Tenant</u>                       | <u>Lease Expiration<br/>Date (Subject to<br/>Renewals)</u> | <u>Renewals</u>               |
|--|--|-------------------------------|
| Fisher-Park Lane<br>Company                | Oct. 1, 2015   | One 25-year renewal<br>term   |
| Hotel Waldorf-<br>Astoria Corpo-<br>ration | Nov. 30, 1977  | One 21-year renewal<br>term   |
| Sigmund Sommer                             | Jan. 1, 2018   | One 25-year renewal<br>term   |
| Rose Associates                            | Nov. 30, 2006  | One 21-year renewal<br>term † |
| Manufacturers<br>Hanover Trust<br>Company  | Dec. 31, 1990  | Two 21-year renewal<br>terms  |
| The New York Bank<br>for Savings           | Oct. 14, 1983  | One 25-year renewal<br>term   |
| Uris 245 Park<br>Corporation               | May 14, 2002   | Two 30-year renewal<br>terms  |

\*\*\* Subject to Landlord's right to terminate as of September 30, 2035 for \$1,000.

\*\*\*\* Subject to Landlord's right to refuse renewal term on payment of "sound value" of building.

† Subject to Landlord's right to refuse to renew on payment of the then value of building.

†† Subject to Landlord's right to refuse second renewal term on payment of the then value of building.

††† Subject to Landlord's right to terminate as of May 14, 2032 upon paying the then value of building.



## Exhibit 12

CASH FLOW FROM BARCLAY, BILTMORE, COMMODORE AND  
ROOSEVELT HOTELS (1965-1971)  
(in dollars)

## The Barclay Hotel

|                      | 1965      | 1966      |
|----------------------|-----------|-----------|
| Net Operating Income | 1,710,817 | 1,835,205 |
| Capital Replacements | 241,226   | 616,480   |
| Cash Flow            | 1,469,591 | 1,218,725 |

## The Biltmore Hotel

|                      | 1965      | 1966      |
|----------------------|-----------|-----------|
| Net Operating Income | 1,767,851 | 1,640,464 |
| Capital Replacements | 200,636   | 303,954   |
| Cash Flow            | 1,567,215 | 1,336,510 |

## The Commodore Hotel

|                      | 1965      | 1966    |
|----------------------|-----------|---------|
| Net Operating Income | 1,545,612 | 812,154 |
| Capital Replacements | 114,317   | 32,011  |
| Cash Flow            | 1,431,295 | 780,143 |

## The Roosevelt Hotel

|                      | 1965      | 1966      |
|----------------------|-----------|-----------|
| Net Operating Income | 1,534,702 | 1,339,241 |
| Capital Replacements | 768,896   | 631,189   |
| Cash Flow            | 765,806   | 708,052   |

| 1967      | 1968      | 1969      | 1970      | 1971      |
|-----------|-----------|-----------|-----------|-----------|
| 2,276,193 | 2,614,394 | 3,228,424 | 2,956,526 | 2,025,446 |
| 577,594   | 437,883   | 602,180   | 466,937   | 74,996    |
| 1,698,599 | 2,176,511 | 2,626,244 | 1,489,589 | 1,950,450 |

| 1967      | 1968      | 1969      | 1970      | 1971    |
|-----------|-----------|-----------|-----------|---------|
| 1,846,969 | 2,113,841 | 2,183,272 | 1,352,193 | 580,296 |
| 300,739   | 577,404   | 639,711   | 193,063   | 129,824 |
| 1,546,230 | 1,536,437 | 1,543,561 | 1,159,130 | 450,472 |

| 1967      | 1968      | 1969      | 1970      | 1971      |
|-----------|-----------|-----------|-----------|-----------|
| 1,350,110 | 1,338,050 | 1,790,175 | 1,012,233 | (263,746) |
| 545,900   | 1,018,428 | 1,611,639 | 1,379,946 | 652,311   |
| 2,154,323 | 319,622   | 178,536   | (367,713) | (916,057) |

| 1967      | 1968      | 1969      | 1970      | 1971    |
|-----------|-----------|-----------|-----------|---------|
| 7,774,488 | 1,963,251 | 1,953,613 | 1,469,460 | 564,294 |
| 519,099   | 564,841   | 483,510   | 370,830   | 433,645 |
| 1,255,389 | 1,398,410 | 1,470,103 | 1,098,630 | 130,649 |

## Exhibit 35 A

NOTES RELATING TO GRAND CENTRAL TERMINAL  
STATEMENT OF REVENUES AND COSTS—YEAR 1969

- (A) The following equivalent positions are included in the Operation of the Terminal:

|                          |           |
|--------------------------|-----------|
| Station Master and Staff | 17        |
| Information Clerks       | 9         |
| Gate Ushers              | 12        |
| Elevator Operators       | 5         |
| Maids and Matrons        | 4         |
|                          | <u>47</u> |

- (B) Materials and Supplies includes those used in maintenance \$75,154. and cleaning \$23,254. of the Terminal.
- (C) Analysis of Cost of Steam, Electricity and Water purchased less credit for sales and consumption by tenants and other users in Grand Central Terminal.

## YEAR 1969

|  | Steam          | Electricity   | Total             |
|--|----------------|---------------|-------------------|
| Gross Cost   | \$1,262,447    | \$1,143,831   | \$2,406,278       |
| Deduct sales and consumption by others                                     | 875,255        | 1,094,989     | 1,970,244         |
|  | <u>387,192</u> | <u>48,842</u> | <u>436,034</u>    |
| Deduct additional sales of brine, air conditioning etc. not included above |                |               | 65,656            |
| Water & Sewer  | \$223,443      |               |                   |
| Less Sales   | 53,218         |               | 170,225           |
| NET UTILITIES  |                |               | <u>\$ 540,603</u> |

- (D) Other Direct Costs includes the following items:

|                        |                  |
|------------------------|------------------|
| Rubbish Removal        | \$ 45,648        |
| Other General Expenses | 8,285            |
|                        | <u>\$ 53,933</u> |

- (E) Supervision: Departmental Overhead Costs as follows:

|   |                   |
|---|-------------------|
| Maintenance, Repairs and Building Service | \$ 19,904         |
| Cleaning                                  | 30,230            |
| Terminal Operation                        | 30,448            |
| Policing                                  | 53,193            |
| Track Cleaning                            | 5,122             |
|   | <u>\$ 138,897</u> |

- (F) Amounts billed to tenants represent the following items:

|   |                   |
|---|-------------------|
| Recoverable Cost of Maintenance for the Account of Concessionaires and others | \$ 86,443         |
| Recoverable Cost of Policing a Joint Passageway                               | 14,470            |
| Recoverable Cost of Cleaning a Joint Passageway                               | 12,307            |
|   | <u>\$ 113,220</u> |

## Exhibit 35 B

GRAND CENTRAL TERMINAL  
STATEMENT OF REVENUES AND COSTS  
YEAR 1971

|  |     |                    |
|--|-----|--------------------|
| Rents and Concession Revenues                    |     | \$3,174,257        |
| Costs of Maintenance and Operation               |     |                    |
| <i>Labor:</i>                                    |     |                    |
| Maintenance, Repairs and Service Plant Operation |     | \$1,141,679        |
| Cleaning Terminal Operation                      | (A) | 600,392            |
| Policing   |     | 438,566            |
| Track Cleaning                                   |     | 57,188             |
| Total  |     | \$2,870,578        |
| <i>Other Costs:</i>                              |     |                    |
| Material and Supplies                            | (B) | 69,692             |
| Utilities  | (C) | 660,710            |
| Other Direct Costs                               | (D) | 69,485             |
| Real Estate Taxes                                |     | 598,494            |
| Gross Earnings Taxes                             |     | 135,000            |
| Depreciation                                     |     | 264,500            |
| Insurance  |     | 18,990             |
| Total  |     | 1,816,871          |
| <i>Overheads:</i>                                |     |                    |
| Supervision                                      | (E) | 205,029            |
| General Administrative Expenses                  |     | 350,301            |
| Total  |     | 555,330            |
| Deduct amounts billed to tenants                 | (F) | 166,055 CR.        |
| Net Cost of Maintenance and Operation            |     | 5,076,724          |
| NET DEFICIT                                      |     | <u>\$1,902,467</u> |

## EXHIBIT 35 B

NOTES RELATING TO GRAND CENTRAL TERMINAL  
STATEMENT OF REVENUES AND COSTS—YEAR 1971

- (A) The following equivalent positions are included in the Operation of the Terminal:
- |                          |           |
|--------------------------|-----------|
| Station Master and Staff | 17        |
| Information Clerks       | 9         |
| Gate Ushers              | 12        |
| Elevator Operators       | 5         |
| Maids and Matrons        | 4         |
|                          | <u>47</u> |
- (B) Materials and Supplies includes those used in maintenance \$51,657. and cleaning \$15,761. of the Terminal.
- (C) Analysis of Cost of Steam, Electricity and Water purchased less credit for sales and consumption by tenants and other users in Grand Central Terminal.

## YEAR 1971

|  | Steam            | Electricity      | Total             |
|--|------------------|------------------|-------------------|
| Gross Cost   | \$1,530,170      | \$1,327,434      | \$2,857,604       |
| Deduct sales and consumption by others                                     | <u>1,060,881</u> | <u>1,270,746</u> | <u>2,331,627</u>  |
|  | 469,289          | 56,688           | 525,977           |
| Deduct additional sales of brine, air conditioning etc. not included above |                  |                  | 72,800            |
| Water & Sewer  | \$272,425        |                  |                   |
| Less Sales   | <u>64,892</u>    |                  | <u>207,533</u>    |
| NET UTILITIES  |                  |                  | <u>\$ 660,710</u> |
| (D) Other Direct Costs include the following items:                        |                  |                  |                   |
| Rubbish Removal  |                  | \$               | 46,008            |
| Other General Expenses   |                  |                  | 23,477            |
|  |                  | \$               | <u>69,485</u>     |



## (E) Supervision: Departmental Overhead Costs as follows:

|  |                   |
|--|-------------------|
| Maintenance, Repairs & Building Service \$ | 22,605            |
| Cleaning                                   | 43,090            |
| Terminal Operation                         | 40,887            |
| Policing                                   | 92,631            |
| Track Cleaning                             | 5,816             |
|  | <u>\$ 205,029</u> |

## (F) Amounts billed tenants represent the following items:

|   |                   |
|---|-------------------|
| Credits for Policing Off Track Betting Location and Joint Passageway          | \$ 89,320         |
| Recoverable Cost of Maintenance for the Account of Concessionaires and others | 57,771            |
| Recoverable Cost of Cleaning a Joint Passageway                               | 18,964            |
|   | <u>\$ 166,055</u> |

## Exhibit 36

DEFERRED MAINTENANCE COSTS FOR GRAND CENTRAL TERMINAL  
I. DEFERRED STRUCTURAL MAINTENANCE

|   | Estimated<br>Cost       |
|---|-------------------------|
| Renewal of roof over Main Concourse, Main Waiting Room and North Balcony in kind including drainage, copper ridge roll, eave flashing and gable flashing  |                         |
| 1. Removal of skylights on fourth floor roof and substituting roofing   | \$ 20,000               |
| 2. Replacing copper roofing on remainder of roof  | 283,800                 |
| 3. Renewal of roof drainage system  | <u>22,500</u> \$326,300 |
| Point up brickwork on outside of seventh floor parapet wall adjacent to and south of cooling towers   | 1,500                   |
| Point up joints in granite work as necessary from street level to overhead roadway level on 42nd Street from Commodore Hotel to Vanderbilt Avenue and on Vanderbilt Avenue from 42nd Street to Pan Am Building line | 4,000                   |
| Repair of stone and terra cotta balustrade along 42nd Street from Commodore Hotel to Vanderbilt Avenue  | 3,000                   |
| Repair, clean, red lead and paint the steel wainscoting on the northeast portion of the northbound overhead roadway over 45th Street, also renew 700 feet of sidewalk on 42nd Street east of Vanderbilt Avenue      | 6,500                   |
| Repair various leaks along overhead roadway up to 46th Street, including new leaders, new drains, new track pans, etc.  | 5,000                   |
| Renewal of expansion joints along overhead roadway up to 46th Street  | 20,000                  |
| Total   | <u>\$366,300</u>        |

## Exhibit 36

## II. DEFERRED OPERATING MAINTENANCE

|  | Estimated<br>Cost       |
|--|-------------------------|
| Paint ceilings, walls and piping in refrigeration plant, heating and water supply plan and various operating shops | \$ 26,000               |
| Renovation of refrigeration plant and heating and water supply plant   |                         |
| 1. Refrigeration plant   | \$105,000               |
| 2. Heating and water supply plant  | <u>100,000</u> 205,000  |
| Emergency lighting system (required by City law by July 1, 1972)   | <u>141,200</u>          |
|  | <u><u>\$372,200</u></u> |

## Exhibit 36

## III. DEFERRED NONOPERATING AND NONSTRUCTURAL MAINTENANCE

|   | Estimated<br>Cost       |
|---|-------------------------|
| Steam clean elevations from overhead roadway up to roof parapet, south, east and west side of Terminal    | \$ 75,075               |
| Chemically clean the interior Caenstone in the Terminal   | 37,600                  |
| Paint and redecorate the barrel vaulted ceiling in the Main Concourse including the plaster ornamentation |                         |
| 1. Restoration of ornamental plaster  | \$ 45,600               |
| 2. Painting of arched ceiling   |                         |
| Scaffolding   | 179,000                 |
| Artwork   | 115,000                 |
| Company force work  | 87,360                  |
| Total   | <u>426,960</u>          |
|   | <u><u>\$539,635</u></u> |

Deferred Structural Maintenance \$ 366,300

Deferred Operating Maintenance 372,200

Deferred Nonoperating and  
Nonstructural Maintenance 539,635Total Estimated Cost \$1,278,135

Exhibit C,  
Photo of Grand Central Terminal



Exhibit D 1. Photo  
of Grand Central Terminal

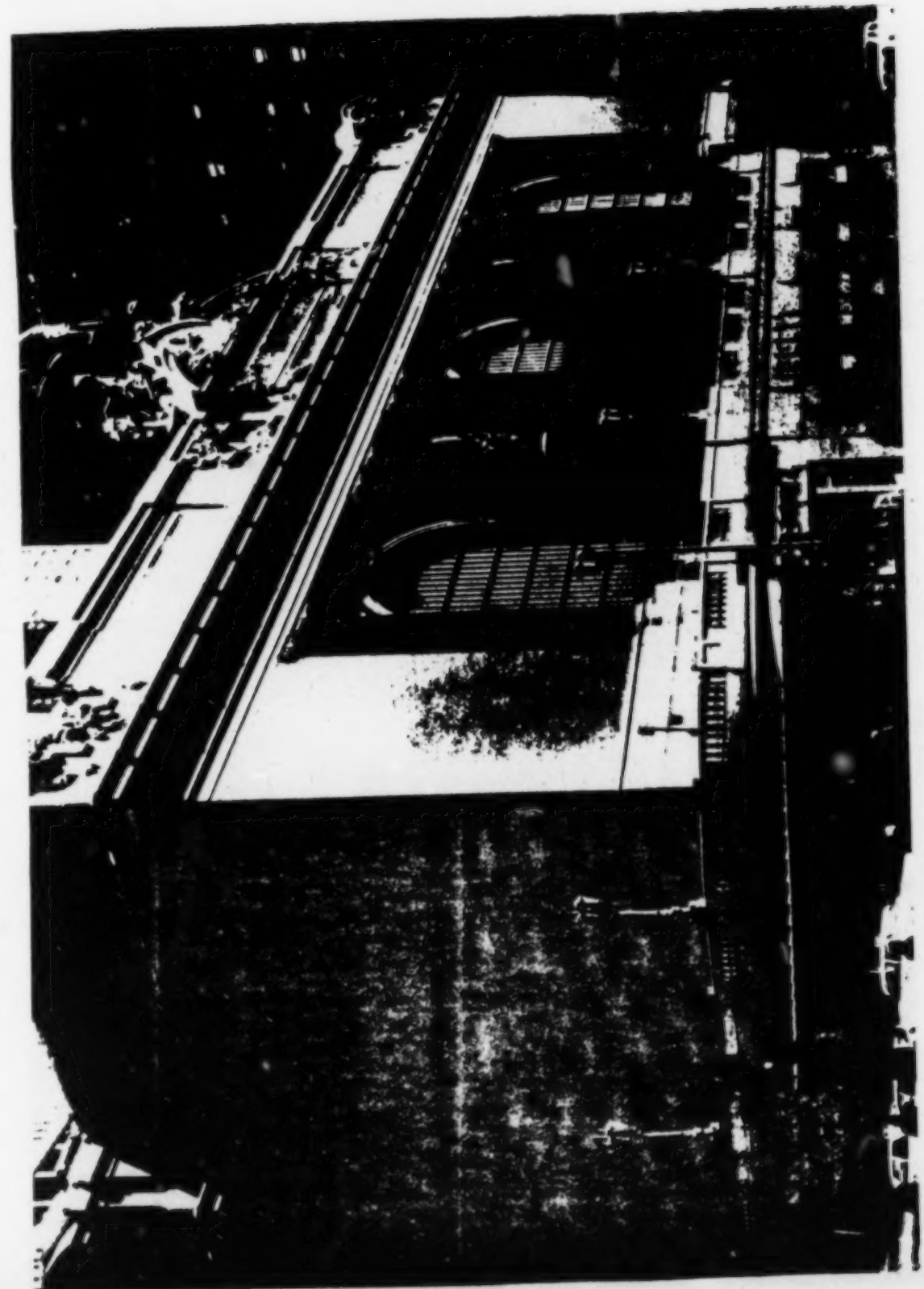
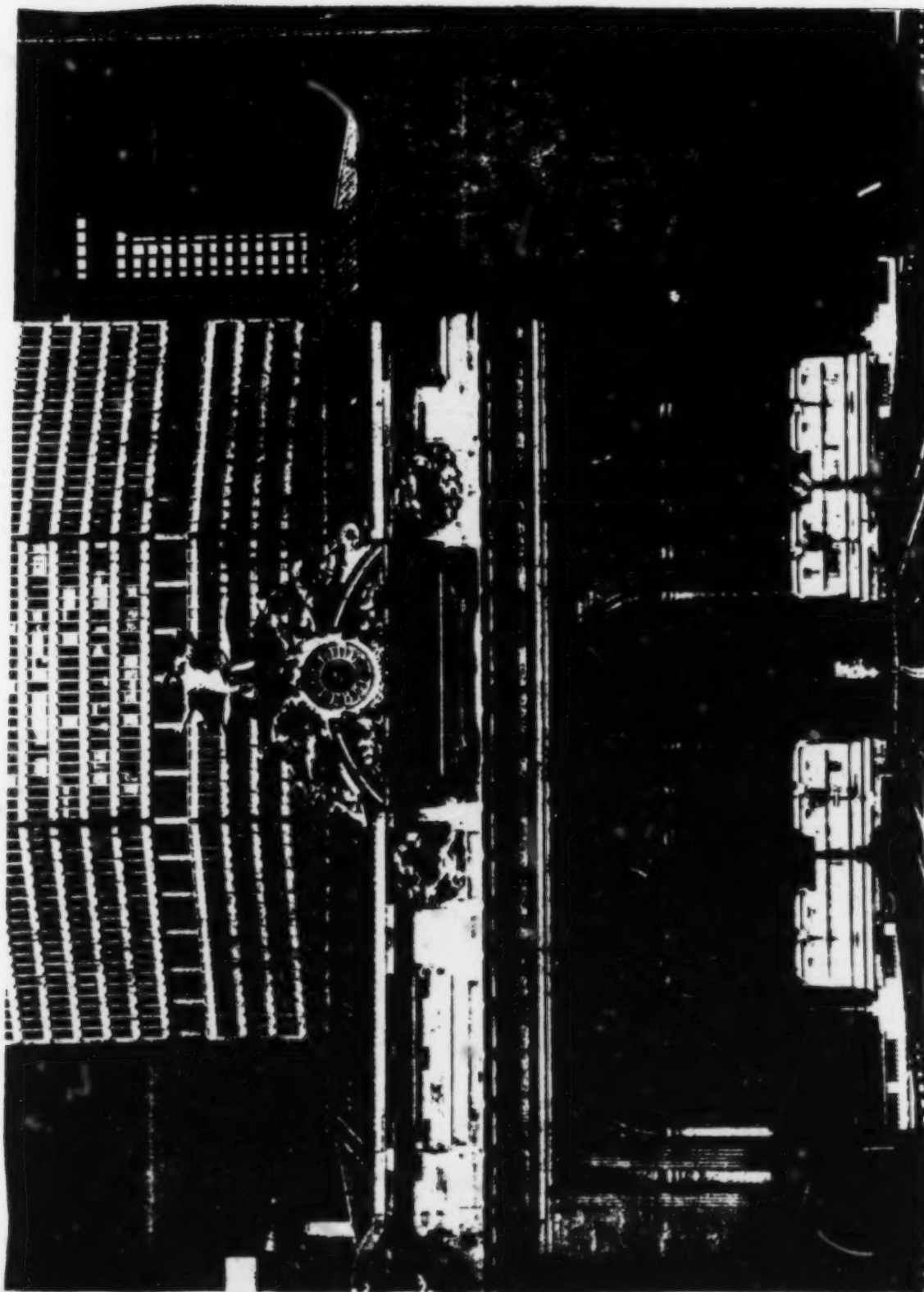




Exhibit D 4. Photo  
of Grand Central Terminal



Appraisal Report & Analysis  
Grand Central Terminal

Exhibit V

WM. A. WHITE & SONS

ESTABLISHED 1868

REAL ESTATE

51 East 42nd Street • New York, N. Y. 10017

Telephone: 682-2300

May 22, 1972

James Nespole, Esq.  
Assistant Corporation Counsel  
Municipal Building  
New York City, N.Y.

Dear Sir:

Pursuant to your request, we have prepared an appraisal and Highest & Best Use Study of the property known as Grand Central Terminal, located in the City and State of New York.

We have considered the proposals known as Breuer I and Breuer II Revised, dated August, 1968 and July, 1969.

We have considered the lease that is now in effect between the 51st Street Realty Corporation, hereafter known as Penn Central and U. G. P. Properties, Inc. dated January 22, 1968.

We have considered the office market in midtown from 1968 through 1972. We have considered rental rates of new office buildings and mortgage interest rates over the same 4-year period.

We have considered an alternative plan which provides more income to Penn Central than Breuer Plans I or II Revised, while at the same time, not defacing any part of the Terminal Building.

We have analyzed the proposals of Breuer I and II Revised and find that the construction of the proposed office tower would not provide any net income to the developer, U.G.P. Properties, Inc.

We find that there is an abundance of vacant new office space in the Grand Central area. We find that rents in new office buildings are below the rental rate which is necessary to make the development over the Grand Central Terminal a profitable business venture.

Specifically, we find that the alternative approach considered in the body of the attached report provides \$800,000 more in net income to Penn Central than the net rental under Breuer Plans I or II Revised.

There are various ancillary benefits created by the preservation of the Terminal building which accrue to those buildings that surround it. The light, view and air over the Terminal will be preserved. The southerly views from the Pan Am Building will also be preserved.

Attached hereto is a report indicating our findings.

Very truly yours,

/s/ ROBERT VON ANCKEN  
Robert Von Ancken,  
Senior Realty Appraiser  
Vice President

RVA:eg  
Encl.

## Exhibit V

### Alternative Use of Development Rights

In 1971 the Terminal earned \$1,045,000 net income from those commercial uses located within that area of the Terminal that would be demolished or lost under Plan I and Revised Plan II. This income would be lost to Penn Central, the landlord, with the implementation of the Breuer proposals. Subtracting the rent loss of \$1,045,000 from the projected net rent for the development space of \$3.6 million reduces the true net income to the Terminal under Breuer Plan I and Reviser Plan II to \$2,555,000.

Further, a considerable portion of the upper floor space on the first through third floors on the southwesterly office bank is now occupied by Penn Central and related railroad uses for which no rent is being collected. The railroad would have to rent alternative facilities and thus further reduce their actual net income through the present leasing plan with U.G.P. Properties, Inc. The estimated rental value for this space is \$33,600 (\$4. per sq. ft.). Further, the Breuer plans do not substantially reduce the operating cost of the Terminal for railroad and commercial uses. The present lease for Breuer I and II Revised is \$1.68 and \$1.72 per square foot of gross zoning area. The rent is about 20% less than the average because of the extra foundation problems and costs borne by the lessee.

There are 2,353,400 square feet of development rights over the Terminal that could be put in an "air bank" and transferred to those owners adjoining the Terminal through a common chain of ownership (See Zoning section for further data). Various blocks of air space could be rented or sold to adjoining sites at a rate that would induce those interested parties to participate. The projected rent for the available development rights is \$1.45 per square foot of permitted zoning building bulk, 15% less than the average gross economic rent per square foot of zoning area for

Breuer I and II Revised of \$1.70 per square foot. \$1.45 per square foot  $\times$  2,353,400 square feet available for transfer = \$3,412,486 rounded to \$3,400,000.

This 15% reduced rental on top of an originally low economic rent would unquestionably be sufficient inducement to adjoining property owners to rent or buy the development rights over the Terminal and use it for their own office sites. This does not include any payment that the Pan Am Building might pay for protection of their southerly exposure.

Further, the rental value of the proposed nearby structure would be enhanced because the present vistas and open air over the Terminal would remain.

Under Breuer Plan I and II Revised, Penn Central is actually adversely affecting the vistas and air of the adjoining properties that are under their ownership and available for purchase.

Nearby building sites would have the advantage of greater light, view and air provided by the air mass above the Terminal. Thus rental rates in proposed nearby office buildings would be enhanced and should provide some of the necessary inducement for adjoining property owners to lease or buy from the Terminal "air bank".

The Terminal would lose \$1,455,000 in 1971 of gross income that it currently derives from renting the space in the southerly part of the Terminal, the theater and the parking lot at 43rd Street. This space would have to be demolished for a new office tower and the parking lot would be used for truck loading and a one-story structure.

The income derived from the rental of the unused development rights plus the savings by retaining all Terminal rent income is substantially greater than the rent to be paid by the proposed tenant, U.G.P. Properties, Inc.

The income from the various commercial uses could be enhanced by allowing additional booths and perhaps converting the space 20' above the waiting rooms into office, store or recreational facilities. Many of the booths and stores are sublet at substantially higher rents. These leases will eventually come due and the Terminal owners could then charge the higher sublease rents.

The combination of the savings to Penn Central by keeping the present income to the Terminal intact (\$1,045,000 of net income lost under Plan I and Revised Plan II) and the money received from renting the development rights in the "air bank" over the Terminal, \$3,400,000, more than offsets the rent loss of \$3.6 million sustained by negating the existing lease to U.G.P. Properties Inc.

The rent loss sustained by Penn Central under Breuer Plan I and Revised Plan II as compared to the suggested alternative plan is: 2,353,440 sq. ft. gross @ \$1.45 per sq. ft. = \$3,400,000

|   |                    |
|---|--------------------|
| Estimated Net Rental Value of<br>development space under existing<br>lease to U.G.P. Properties, Inc. | \$3,600,000        |
| Less loss of net income from<br>southerly section of terminal   | <u>\$1,045,000</u> |
| Net to Terminal under Breuer Plans  | <u>\$2,555,000</u> |
| Difference  | \$ 845,000         |

Alternative Plan provides \$845,000 more income to Penn Central on an annual basis than the lease to U.G.P. Properties, Inc.